CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 28 **APRIL 20, 1994** **NO. 16**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Parts 101 and 122

(T.D. 94–34)

CUSTOMS SERVICE FIELD ORGANIZATION SANTA TERESA, NEW MEXICO

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations governing the Customs field organization by establishing Santa Teresa, New Mexico, as a port of entry. The document also establishes the Santa Teresa Airport, which is within the boundaries of the port of entry, as a designated airport for the purposes of report of arrival and Customs clearance. Currently, Santa Teresa is a temporary Customs station, and Santa Teresa Airport is operating as a landing rights airport. Because of the traffic in the area which already exists, and the anticipated growth in that traffic, Customs has determined that a need exists to create a port of entry at Santa Teresa. Through this change, the general public and importers will be served better and Customs personnel and resources will be more efficiently utilized.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service, (202) 927–0192.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), by establishing a port of entry at Santa Teresa, New Mexico and is amending § 122.24(b) by adding the Santa Teresa Airport to the list of airports designated as airports at which pri-

vate aircraft arriving in the Continental U.S. via the U.S.-Mexican border from a foreign place in the Western Hemisphere south of the U.S. can land.

Customs published a Notice of Proposed Rulemaking in the Federal Register (57 FR 33462) on July 29, 1992, proposing these actions and inviting the public to comment.

No comments were received in response to the proposal. After further review, Customs has determined to amend the regulations as proposed. Until this amendment becomes effective, the only port of entry along the New Mexico-Mexico border is located in the far western portion of the state. Because the amount of traffic in the Santa Teresa area has increased recently, Customs has established, as an interim measure, a temporary Customs station at Santa Teresa under the authority of § 101.4(d), Customs Regulations. The airport at Santa Teresa, which recently lost its status as a user fee airport by operation of law, is now operating as a landing rights airport.

Establishing Santa Teresa as a Port of Entry

The criteria for determining whether a port of entry should be established by Customs was initially identified in T.D. 82–37 on March 9, 1982 (47 FR 10137). The criteria in that T.D. were subsequently revised by T.D. 86–14 (February 5, 1986, 51 FR 4559) and T.D. 87–65 (May 4, 1987, 52 FR 16328).

The criteria used by Customs in determining whether a port of entry shall be established are whether the community requesting creation of the port can: (1) demonstrate that the benefits to be derived justify the Federal Government expense involved; (2) be serviced by at least two major modes of transportation (rail, air, water, or highway); and (3) has a minimum population of 300,000 within the immediate service area (approximately a 70–mile radius). In addition, T.D. 82–37 provides that the actual or potential Customs workload (minimum number of transactions per year) must meet one of several alternate criteria, one of which is 2,500 consumption entries (each valued over $1000.00) of which no more than half can be attributed to one private party. Finally, T.D. 82–37 provides that the facilities at the location must include adequate warehousing space for secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas and other space necessary for regular Customs operations.

The Regional Commissioner of the Southwest Region has reported to Customs Headquarters that the Santa Teresa area is well served by air, rail, and highway modes of transportation. The population within a 70–mile radius of the port is contained in a variety of jurisdictional units and communities. Both El Paso, Texas and Juarez, Mexico are within that radius, as are several smaller communities. The 1990 El Paso County estimated population was over 606,000, while Dona Ana County, New Mexico added another 15,000. The estimated 1990 population of Juarez, Mexico is 1.2 million. All these figures are expected to

grow significantly in the coming years. Creation of a port of entry at Santa Teresa will more evenly distribute the vehicular traffic which is currently forced to pass through El Paso, Texas. There is significant construction taking place in and around the vicinity of Santa Teresa to build inspection booths and stations, administration buildings and other support facilities to allow Customs to perform its mission in a safe and efficient manner. The Mexican Government was instrumental in assisting construction of a new paved road to the border from Mexico which was completed in early October 1993. Customs has received commitments from several corporate importers that they will utilize Santa Teresa as a port of entry once it becomes operational. Studies conducted by several sources have indicated that, once the port becomes operational, over 25,000 commercial vehicles will use the port per year, and approximately 6,000 consumption entries will be filed per year at the land border port. The local Chamber of Commerce reports that several corporations have expressed interest in locating in the area in anticipation of Santa Teresa's being designated a port of entry by Customs. Economic benefits, in the form of additional employment, are already being felt in the community.

During the period Santa Teresa has been operating as a temporary Customs station, Customs has achieved notable results in obtaining commitments from the trade community regarding their use of electronic data input for the processing of entries. Currently, most of the brokers or importers filing entries are automated. No current importer dominates the scene, and, as the surrounding infrastructure continues to improve, additional entities have expressed their intentions to utilize the port.

Currently, the only port of entry along the New Mexico-Mexico border is located in the far western portion of the state. Diplomatic negotiations have been held with the Government of Mexico concerning the creation of a port of entry at Santa Teresa, and both governments are in agreement with such an action.

Port of Entry Boundaries

The boundaries of the port of entry of Santa Teresa are as follows:

Beginning at the junction of the boundary between Texas and New Mexico with the U.S.-Mexico border, west, along the Mexico-U.S. border until it intersects the range line between Range 1 East and Range 2 East, New Mexico Principal Meridian; at that point, north along that range line until it reaches the line between Township 27 South and Township 28 South; then east along the Township line until it reaches the Texas-New Mexico border; then south-east along the Texas-New Mexico border to the beginning point.

Santa Teresa Airport

In this action, Customs is also amending § 122.24(b) by adding the Santa Teresa Airport, which is within the boundaries of the port of entry, to the list of airports designated as airports at which private air-

craft arriving in the Continental U.S. must report intended arrival pursuant to § 122.23(b) and land for Customs processing in accordance with § 122.24(b). Section 122.23(b) provides, essentially, that all private aircraft arriving in the Continental U.S. via the U.S.-Mexican border, from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from any place in Mexico, shall furnish notice of intended arrival to Customs at the nearest designated airport to the point of crossing for the first landing in the U.S. Section 122.24 provides that such aircraft shall land for Customs processing at the nearest designated airport to the border or coastline crossing point. At present, there is no designated airport in the State of New Mexico. The identification of the Santa Teresa Airport as a designated airport by Customs will benefit the flying public by increasing the options available for reporting arrival and obtaining Customs processing. The addition of this airport will also reduce delays at existing designated airports by permitting a better distribution of the inspection burden.

Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued after notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12866.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organizations and functions (Government agencies).

List of Subjects in 19 CFR Part 122

Airports, Aircraft, Customs duties and inspection, Drug traffic control, Security measures.

Amendments to the Regulations

Accordingly, Parts 101 and 122 of the Customs Regulations (19 CFR Parts 101 and 122) are amended as follows:

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. Section 101.3(b) containing the list of Customs regions, districts and ports of entry is amended by adding in the South West Region, under the column headed "Ports of entry", "Santa Teresa, N.Mex. (T.D. 94–34)" in the appropriate alphabetical order opposite "El Paso, Tex."

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1624, 1644; 49 U.S.C. App. 1509.

2. Section 122.24(b) is amended by adding in appropriate alphabetical order in the column headed "Location", the words "Santa Teresa, N.Mex.", and directly opposite, in the column headed "Name", the words "Santa Teresa Airport".

GEORGE J. WEISE,
Commissioner of Customs.

Approved: March 9, 1994.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, April 6, 1994 (59 FR 16121)]

(T.D. 94–35)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE: APRIL 1 THROUGH JUNE 30, 1994

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	$0.706300
Austria	Schilling	0.083822
Belgium	Franc	0.028629
Brazil	Cruzado	N/A
Canada	Dollar	0.719942
China, P.R.	Renminbi yuan	*0.114550
Denmark	Krone	0.150173
Finland	Markka	0.181901
France	Franc	0.172741
Germany	Deutsche mark	0.589971
Hong Kong	Dollar	0.129413
India	Rupee	0.031827
Iran	Rial	N/A
Ireland	Pound	1.412000
Italy	Lira	0.000615
Japan	Yen	0.009639
Malaysia	Dollar	0.373274
Mexico	Peso	**0.297354
Netherlands	Guilder	0.525183
New Zealand	Dollar	0.564700
Norway	Krone	0.135731
Philippines	Peso	N/A
Portugal	Escudo	0.005754
Singapore	Dollar	0.636132
South Africa, Republic of	Rand	0.286123
Spain	Peseta	0.007254
Sri Lanka	Rupee	0.020500
Sweden	Krona	0.126342
Switzerland	Franc	0.701016
Thailand	Baht (tical)	0.039604
United Kingdom	Pound	1.473500
Venezuela	Bolivar	N/A

Dated: April 5, 1994.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

*The effective date for the quarterly rate for China, P.R. is April 5, 1994.
**The effective date for the quarterly rate for Mexico is April 4, 1994.

(T.D. 94–36)

FOREIGN CURRENCIES

Daily Rates for Countries not on Quarterly List for March 1994

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: None.

Greece drachma:

March 1, 1994	$0.004027
March 2, 1994	.004047
March 3, 1994	.004024
March 4, 1994	.004010
March 7, 1994	.004026
March 8, 1994	.004017
March 9, 1994	.004033
March 10, 1994	.004076
March 11, 1994	.004094
March 14, 1994	.004058
March 15, 1994	.004056
March 16, 1994	.004065
March 17, 1994	.004072
March 18, 1994	.004051
March 21, 1994	.004033
March 22, 1994	.004054
March 23, 1994	.004050
March 24, 1994	.004094
March 25, 1994	.004101
March 28, 1994	.004068
March 29, 1994	.004052
March 30, 1994	.004050
March 31, 1994	.004067

South Korea won:

March 1, 1994	$0.001233
March 2, 1994	.001232
March 3, 1994	.001234
March 4, 1994	.001234
March 7, 1994	.001234
March 8, 1994	.001235
March 9, 1994	.001232
March 10, 1994	.001232
March 11, 1994	.001233
March 14, 1994	.001235
March 15, 1994	.001234
March 16, 1994	.001234
March 17, 1994	.001235
March 18, 1994	.001235
March 21, 1994	.001235
March 22, 1994	.001234

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for March 1994 (continued):

South Korea won (continued):

March 23, 1994	$0.001234
March 24, 1994	.001233
March 25, 1994	.001233
March 28, 1994	.001231
March 29, 1994	.001232
March 30, 1994	.001233
March 31, 1994	.001235

Taiwan N.T. dollar:

March 1, 1994	$0.037742
March 2, 1994	.037767
March 3, 1994	.003444
March 4, 1994	.037839
March 7, 1994	.037886
March 8, 1994	.003429
March 9, 1994	.037893
March 10, 1994	.037852
March 11, 1994	.037915
March 14, 1994	.037893
March 15, 1994	.037876
March 16, 1994	.037845
March 17, 1994	.037852
March 18, 1994	.037900
March 21, 1994	.037872
March 22, 1994	.037847
March 23, 1994	.037864
March 24, 1994	.037807
March 25, 1994	.037843
March 28, 1994	.037864
March 29, 1994	.037864
March 30, 1994	.037922
March 31, 1994	.037979

Dated: April 5, 1994.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

(T.D. 94–37)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR MARCH 1994

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 94–7 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: None.

Australia dollar:	
March 14, 1994	$0.718300
Belgium franc:	
March 24, 1994	$0.029019
March 25, 1994	.029087
March 28, 1994	.029011
March 31, 1994	.029087
Canada dollar:	
March 31, 1994	$0.722648
Denmark krone:	
March 24, 1994	$0.162272
Finland markka:	
March 11, 1994	$0.182116
March 14, 1994	.181785
March 17, 1994	.181225
March 30, 1994	.181686
March 31, 1994	.183150
Italy lira:	
March 31, 1994	$0.000622
Japan yen:	
March 1, 1994	$0.009542
March 2, 1994	.009643
March 3, 1994	.009640
March 4, 1994	.009470
March 7, 1994	.009458
March 8, 1994	.009497
March 9, 1994	.009445
March 10, 1994	.009461
March 11, 1994	.009519
March 14, 1994	.009434
March 15, 1994	.009437
March 16, 1994	.009447
March 17, 1994	.009450
March 18, 1994	.009430
March 21, 1994	.009412
March 22, 1994	.009434

FOREIGN CURRENCIES—Variances from quarterly rates for March 1994 (continued):

Japan yen (continued):

March 23, 1994	$0.009398
march 24, 1994	.009477
March 25, 1994	.009537
March 28, 1994	.009604
March 29, 1994	.009667
March 30, 1994	.009702
March 31, 1994	.009766

Mexico peso:

March 9, 1994	$0.302115
March 10, 1994	.304414
March 11, 1994	.303490
March 14, 1994	.303951
March 15, 1994	.302115
March 16, 1994	.302389
March 17, 1994	.303030
March 18, 1994	.300752
March 21, 1994	.300300
March 22, 1994	.300300
March 23, 1994	.299625
March 25, 1994	.297743
March 28, 1994	.297637
March 29, 1994	.298507
March 30, 1994	.297530
March 31, 1994	.297177

Spain peseta:

March 31, 1994	$0.007357

Sweden krona:

March 10, 1994	$0.126342
March 11, 1994	.127632
March 14, 1994	.126920
March 15, 1994	.127008
March 16, 1994	.127324
March 17, 1994	.127649
March 18, 1994	.127372
March 21, 1994	.126614
March 22, 1994	.127000
March 23, 1994	.126952
March 24, 1994	.127162
March 25, 1994	.126566
March 28, 1994	.126687
March 29, 1994	.126374
March 30, 1994	.127033
March 31, 1994	.127828

Switzerland franc:

March 31, 1994	$0.709371

Dated: April 5, 1994.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

(T.D. 94–38)

AMENDMENTS TO CUSTOMS BOND CANCELLATION STANDARDS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Under the Omnibus Trade and Competitiveness Act of 1988, the Secretary of the Treasury is required to publish guidelines for cancellation of bond charges. The guidelines in effect at the time the Act was promulgated were published by Treasury Decision 89–48, dated April 14, 1989. This document amends certain portions of the guidelines that have proven to be inequitable or outdated, provides for new guidelines for cases in which petitions are filed untimely and for certain violations of regulations that have recently been promulgated, and republishes those guidelines which have worked successfully. The authority to promulgate these guidelines was delegated to the Commissioner of Customs by Paragraph 1 of Treasury Department Order No. 165, revised (T.D. 53654). A document published in the Federal Register (59 FR17144) on April 11, 1994 set forth the explanation of the guidelines, but inadvertently omitted the actual guidelines. This document republishes the explanation and sets forth the guidelines.

EFFECTIVE DATE: These guidelines will take effect upon April 11, 1994 and shall be applicable to all cases which are currently open at the petition or supplemental petition stage. No second supplemental petitions shall be accepted solely to gain the benefit of a less harsh guideline.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202) 482–6950.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 1904 of the Omnibus Trade and Competitiveness Act of 1988 (Pub.L. 100–418) amended section 623 of the Tariff Act of 1930 (19 U.S.C. 1623) by adding the following sentence at the end of section 623(c) of the Tariff Act of 1930 (19 U.S.C. 1623(c)):

> "In order to assure uniform, reasonable and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder."

In T.D. 89–48, dated April 14, 1989, the text of guidelines for cancellation of claims for liquidated damages in effect at the time of enactment of the Omnibus Trade and Competitiveness Act was published. Because of changing enforcement priorities and the need for more efficient administrative processing, the guidelines require amendment. Through this document, Customs is publishing those changes.

New Sections XI and XII Added to Guidelines:

The most significant change involves the addition of a new Section XII to the guidelines governing the cancellation of any claim for liquidated damages in which the petition for relief is filed untimely. Under the provisions of section 172.12(b)(1) of the Customs Regulations (19 CFR 172.12(b)(1)), a bond principal has 60 days from the date of mailing of the notice of liability for liquidated damages to file a petition for relief. If the principal does not pay the claim, arrange to pay the claim or file a petition within the 60–day period, then the surety is notified of the claim. Pursuant to the provisions of section 172.12(b)(2) of the Regulations (19 CFR 172.12(b)(2)), the surety has 60 days after notification to file a petition for relief.

Under the provisions of section 172.2(a) of the Regulations (19 CFR 172.2(a)), if any party liable for liquidated damages fails to pay, make arrangements to pay or file a petition for relief, the district director shall promptly refer the claim to the Department of Justice. If no response is received from both the principal and surety, Customs will issue bills to both parties, demanding payment of the unpaid claims. Billing is required before referral of the matter to the Department of Justice for commencement of judicial collection action in the Court of International Trade.

Under the provisions of section 172.23 of the Regulations (19 CFR 172.23), no petition may be entertained after a claim has been referred to the Department of Justice. In the past, Customs has articulated that, as a matter of policy, no late petitions would be entertained even if the matter had not yet been referred to the Department of Justice, but the petitioning period had expired. Under current procedures, if a principal or surety wishes to respond to the claim after billing has begun but referral has not yet occurred, it may only do so through the submission of an offer in compromise pursuant to the provisions of title 19, United States Code, section 1617, and section 161.5 of the Customs Regulations (19 CFR 161.5). Before acceptance of any offer, Customs must seek approval of the Office of General Counsel of the Treasury.

Through this document, Customs is changing its policy with regard to acceptance of late petitions. Petitions which are not filed timely will be honored, but mitigation will be less generous than that offered in those situations where petitions are filed timely.

Under new guidelines for mitigation to be offered when a petition is filed late, the district director will determine, based on the record and information submitted in the untimely filed petition, as to appropriate mitigation that would have been afforded had the petition been filed timely. The district director will then calculate the number of calendar days the petition is late. Weekends and holidays will *not* be excluded from the calculation of number of days late. He will then multiply the number of calendar days late by 0.1 percent. A calculation similar to that used to determine mitigation in late filing of entry summary cases will then be used, as the mitigation amount will be multiplied by the number

of days late times 0.1 percent. A minimum additional payment of $100 on a late petition mitigation will be required.

For example, on November 1, Customs issues a CF 5955A against a bonded carrier, indicating that the carrier is liable for liquidated damages of $100,000 for delivering merchandise directly to the consignee in violation of the provisions of 19 CFR 18.8 and its custodial bond. The petition for relief is due from the bond principal by January 1. A petition is received on January 21, some 20 days late. A review of the petition shows that entry was not made on the merchandise nor were estimated duties paid by the consignee. Had an entry been filed, duties of $9,900 would have been paid. The carrier was shown to have had a good record of compliance, militating toward mitigation in the low end of the $100–$1,000 range for that type of violation. Accordingly, had the petition been filed timely, mitigation to $10,000 ($9,900 in an amount equal to approximate lost revenue plus $100) would have been afforded. Insofar as the petition was 20 days late, the time of lateness (20 days) will be multiplied by 0.1 percent, resulting in a multiplier of 2 percent. The $10,000 mitigation will be multiplied by 2 percent, resulting in a calculation of $200. The $200 amount is compared to the minimum charge of $100 for a late petition. Insofar as the computed amount is higher than the minimum amount, $200 would be added to the mitigation. Mitigation would then be afforded in the amount of $10,200.

As noted, under current procedures no petitions are accepted after billing of the principal and surety has commenced. While we are rescinding that policy through this document, in no case will a petition be accepted after the billing cycle has ended and the case has been determined by Customs to be eligible to be included in any surety sanctioning action pursuant to the provisions of section 113.38 of the Regulations (19 CFR 113.38).

Inasmuch as both the principal and surety have separate petitioning times, a question arises as to whether the late charge will apply to a bond principal who fails to file a petition in the time period afforded to him by regulation, but then files a petition during the time period afforded to surety. Because the principal failed to respond timely during the time period permitted to him, Customs takes the view that his petition will be considered to be late, even if filed during the time period afforded to surety, and mitigation will reflect that late filing.

A new Section XI is added to the guidelines to provide cancellation standards involving claims for liquidated damages assessed against Centralized Examination Station (CES) operators for violations of their custodial bond. A Final Rule was published in the Federal Register on January 22, 1993 (58 FR 5596) as Treasury Decision (T.D.) 93–6, whereby Customs amended the Regulations to provide for a new Part 118 (19 CFR Part 118) and other amendments delineating the duties and responsibilities of CES operators. They are required, pursuant to new section 19 CFR 118.4(g), to maintain a Customs custodial bond in an amount set by the district director. The terms of the Customs custo-

dial bond are found in section 113.63 of the Customs Regulations (19 CFR 113.63). Under the provisions of new section 19 CFR 151.15(b) (also added by T.D. 93–6), CES operators assume liability for merchandise for which they receipt or for which they transport to the CES under their operator's bond. Many of these violations are similar to those arising from breaches of section 113.62(f) of the basic importation bond which involve failure to deliver to or hold merchandise at the place of examination (current Section X of the Guidelines). Accordingly, the cancellation standards relating to failure to keep merchandise safe in the CES or failure to deliver merchandise to the CES will be similar. The explanation of changes to Section X will detail these standards.

The CES operator is also responsible, under the provisions of 19 CFR 118.4(h), for the maintenance and retention of records connected with the operation of the CES. Failing to maintain those records would involve a violation not involving merchandise and would result in liquidated damages of $1,000 for each day the violation continues. The bond cancellation standards for these cases will mirror the guidelines used for cancellation of claims incurred by bonded warehouse operators for violations not involving merchandise. The background information to the changes to Section VII describes these guidelines.

Changes to Section I:

Section I of the bond cancellation standards includes guidelines for the cancellation of charges for late filing of entry summaries. The Option 1 immediate payment of a preset mitigated amount in lieu of filing a petition for relief is an extremely successful procedure and is being retained in late filing of entry summary cases. For those violators who do not wish to take advantage of the Option 1 mitigated amount, petitioning rights will be protected; however, under new guidelines, a party who chooses to petition for relief in a late filing case will no longer necessarily be afforded the Option 1 mitigation amount. If the petitioning party fails to show that the violation did not occur or that it occurred as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

Under the current guidelines, when a petition for relief is filed in a late filing case, a distinction is made between when the entry summary is late by less than 30 days and when it is late by more than 30 days. Different criteria apply to the review of those two types of petitions. This distinction has proved to be meaningless. Petitions are generally filed on the basis that the violation did not occur, or that it occurred as a result of contributory Customs error. In general, petitions are submitted without regard to whether the entry summary was more or less than 30 days late. Additionally, the factors delineated in the current guidelines to be considered when the entry summary is more than 30 days late are not consistent with the Option 1 procedure which does not turn on the intent of the violator, the circumstances causing the lateness or the past record of the violator. Accordingly, Customs is eliminating the distinc-

tion in the guidelines between cases that are late by more or less than 30 days.

The current guidelines note that ordinarily, mitigation granted under Option 2 shall not be in an amount less than that determined in accordance with Option 1 unless extraordinary mitigating factors are present. It has been Customs experience that those extraordinary circumstances generally relate to contributory Customs error or inaccurate detection of the violation. Accordingly, the guidelines are being amended to reflect this fact.

The guidelines do not indicate whether applicable merchandise processing fees, harbor maintenance fees and internal revenue taxes are included in the term "withheld duty" for purposes of mitigation of late filing cases. Questions have arisen as to the propriety of inclusion of these fees and taxes in the withheld duties upon which mitigation is based. In our view, the Government is deprived of not only duties but also these fees when an entry summary is filed and payment of duties and fees is tendered late. Accordingly, the guidelines are amended to provide a definition of "withheld duties" to include any fees and charges that are due and owing at the time of filing of the entry summary.

With the streamlining of the entry process and the onset of automation, multiple entry summaries are often filed by Customs brokers either in a combined single statement with a single duty check attached or a single electronic fund transfer occurring to satisfy the appropriate duties, fees and taxes. (This electronic fund transfer is known as the Automated Clearing House, or ACH.) On occasion, an entry statement check or an electronic fund transfer will be filed untimely. Because each individual entry summary on the statement is covered by its own importation bond, when an untimely filing occurs separate claims for liquidated damages are generated for each entry summary. Multiple assessments arise stemming from the same incident. Bond cancellation standards call for mitigation of each claim separately. This could involve mitigation of $100 or $200 per entry summary (depending upon whether Customs must bill for duties or the duties are paid voluntarily prior to billing) plus the concomitant interest charges.

Multiple liquidated damages assessments arise against numerous bonded parties because of a single error made with regard to the filing of the statement. An electronic fund transfer that is deficient a small amount of money on a large payment of duties will result in rejection of an entire statement. In these instances, mitigation based on each individual bond breach could provide an anomalous result and prove counterproductive to Customs desire to encourage the filing of statement entries. Accordingly, the bond cancellation guidelines are being amended to permit the district director, in his or her discretion, to grant extraordinary relief from multiple claims for liquidated damages when a statement is filed untimely. If it appears from the facts available at the time of the breach that a Customs broker is responsible for the untimely filing of the statement, the district director is afforded the discretion to

mitigate all claims arising from the breach in the same manner as an Option 1 calculation, except that rather than take a $100 base charge for each entry in the statement or batch (as the traditional guidelines dictate), one $500 base amount may be taken in settlement of all claims from the statement or batch. The appropriate interest calculation shall be added to the $500 base amount to arrive at the final Option 1 figure. If the responsible broker fails to pay such Option 1 mitigation within the time period prescribed or fails to petition for relief, the mitigation will be withdrawn and liquidated damages will be issued against all bond principals who have entries included in the statement. Those cases will then be treated individually within appropriate guidelines. District directors are encouraged to use the $500 guideline for first-time violators. Use of these guidelines on subsequent violations is at the district directors' discretion.

In Treasury Decision 93–37, published in the Federal Register on May 28, 1993, (58 FR 30979), Customs amended the provisions of the basic importation and entry bond to provide for liquidated damages when estimated duties, fees and taxes are paid in an untimely manner, when an estimated duty check is returned unpaid by a financial institution or when an electronic fund transfer is made without sufficient funds in the debited account. This claim for liquidated damages is assessed only when the entry documents are filed or electronically submitted timely, but the estimated duty payment is not timely. A claim for liquidated damages of double the unpaid estimated duties, fees and taxes is assessed. The new bond cancellation standards are amended to include these violations in the Option 1 late filing of entry summary guidelines.

Treasury Decision 93–37 also amended the provisions of the international carrier bond to provide for liquidated damages against international carriers who collect passenger processing fees as required by law, but who fail to remit those fees to Customs in a timely manner. Under the provisions of section 24.22(g) of the Customs Regulations (19 CFR 24.22(g)), carriers are required to pay passenger processing fees over to Customs no later than 31 days after the close of the calendar quarter in which they were collected. The failure to remit the collected fees as required by regulation results in assessment of liquidated damages equal to two times the collected but unremitted fees. The guidelines for cancellation of claims for late filing of estimated duty payments are amended to include guidelines for those claims established for late remission of collected passenger processing fees.

Changes to Section II:

Section II includes the standards for cancellation of claims resulting from breaches of Temporary Importation Bonds (TIBs).

Under current guidelines, if merchandise is exported or destroyed but not within the bond period, or if it was exported but not under Customs supervision (if required), or if it was timely exported or destroyed but Customs was not notified (See C.S.D. 91–19 for timeliness of notification requirements) so as to cancel the bond, the guidelines call for cancelling

the claim for liquidated damages upon payment of an amount between 1 and 5 percent of the "bond amount" but not less than $100. This language has caused some confusion, insofar as the bond amount is often the full amount of a term bond. The bond amount can far exceed any double the duty or 110 percent of the duty claim that might arise because of a breach. Accordingly, Customs is amending this guideline by replacing the phrase "bond amount" with the term "the claim."

Customs has determined that less culpability exists in those cases where the merchandise is exported or destroyed in a timely fashion and the required proof is filed untimely as opposed to those instances where the merchandise is exported or destroyed outside the bond period. Therefore, the former claims will continue to be cancelled upon payment of an amount between 1 and 5 percent of the claim for liquidated damages (usually double or 110 percent of the duties), but in the latter instances (exportation or destruction outside the bond period), the claims will be cancelled upon payment of an amount between 5 and 10 percent of the claim, but not less than $200.

Under current guidelines, relief is granted to one times the duty on merchandise which is sold but later exported. This does not take into account whether merchandise is exported within or outside of the bond period. Customs is amending the guidelines to grant relief to one times the duty on merchandise which is sold but later exported within the bond period. For merchandise which is sold but later exported outside the bond period, the claim for liquidated damages will be cancelled upon payment of an amount equal to one and one-half times the duty. No relief shall be granted in these cases involving liquidated damages of 110 percent of the duties.

Under current policy, when Customs wishes to supervise the exportation or destruction of TIB merchandise, the entry is designated at the time of presentation for Customs supervision of exportation or destruction. If the importer fails to obtain Customs supervision of exportation or destruction, despite the specific designation by Customs, he receives the same mitigation as the importer who receives the requisite supervision but does so outside the bond period. Customs is of the view that, inasmuch as supervision of exportation or destruction is required so infrequently, the TIB importer who fails to obtain such supervision should receive less generous mitigation. Accordingly, the guidelines are amended to take an amount between ten and twenty-five percent of the claim amount, but not less than $500, when supervision is required but not obtained.

TIBs are sometimes taken on goods that are otherwise duty-free. Under the provisions of section 10.31(f) of the Customs Regulations (19 CR 10.31(f)), the district director is empowered to require a bond amount necessary to protect the revenue. In those instances where a breach occurs regarding otherwise duty-free merchandise, Customs should follow the appropriate guideline based on the circumstances surrounding the breach, but in no case should Customs cancel the claim

upon payment of an amount less than two times the applicable merchandise processing fee or $100, whichever is greater.

Changes to Section III:

Section III includes bond cancellation standards for claims which arise from violation of a custodial bond maintained by a bonded carrier. With the proliferation of overnight courier services, the volume of violations involving misdelivery of in-bond merchandise has risen. These result in violations of 19 CFR 18.8 and the assessment of claims for liquidated damages. In many instances, informal entries are filed on the misdelivered merchandise. The claims for liquidated damages are generally cancelled upon payment of $100, an amount that often exceeds the value of the misdelivered merchandise. Accordingly, Section III of the Customs Bond Cancellation Standards is amended to provide for cancellation upon payment of an amount between $50 and $1,000 of any claim for which entry is made and duties, fees and taxes are paid via the informal entry process.

Additionally, many times in-bond violations are discovered when carriers come forward and disclose the violations to Customs. In order to encourage this behavior, new guidelines have been promulgated to permit mitigation to as low as $25 per entry when the in-bond carrier brings such violations to Customs attention.

Occasionally, the merchandise which is not properly delivered or is delivered short is, in fact, restricted merchandise. In those instances, mitigation guidelines based upon a loss of revenue do not take into account the possible inadmissibility of the merchandise. Accordingly, the guidelines are amended to specifically address these situations. Where the principal or surety can show that entry was made, duties were paid and the merchandise was found to be admissible, the claim shall be cancelled upon payment of an amount between $100 and $1,000, consistent with guidelines for admissible merchandise; however, in those instances where the bond principal cannot show that entry was made, duties were paid and the merchandise was found to be admissible, the claim shall be cancelled upon payment of an amount equal to the duties plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250.

Finally, the in-bond guidelines are amended to permit use of the Option 1 mitigation procedures when the violation involves the late delivery of in-bond merchandise or the late delivery of in-bond documents to Customs.

Changes to Section IV:

Section IV of the bond cancellation standards includes guidelines for cancellation of claims arising from failure to redeliver merchandise to Customs custody. An anomalous situation results under current guidelines for cancellation of claims for failing to mark merchandise with the country of origin (as required by the provisions of 19 U.S.C. 1304) when the merchandise is not marked and liquidation of the entry has become final, which would preclude Customs from assessing marking duties.

Pursuant to current guidelines, if liquidation is final, thereby barring the assessment of marking duties, claims are cancelled upon payment of an amount equal to no less than 50 percent of the value. This places the bond principal whose entry has been liquidated and such liquidation has become final at a mitigation disadvantage compared to the bond principal whose entry has not been liquidated.

The latter principal, if a first-time violator, would receive mitigation to an amount between 10 and 25 percent of the value of the merchandise, after marking duties have been deposited. This would leave this principal with an ultimate liability, combining the payment of marking duties and the bond charge cancellation amount, of between 20 and 35 percent of the value of the shipment. Rather than further penalize the principal whose entry has been liquidated and such liquidation has become final, Customs is amending the guidelines to provide for mitigation to an amount between 20 and 35 percent of the value of the merchandise for the first-time violator whose entry has been liquidated and such liquidation has become final and to an amount between 35 and 60 percent of the value of the merchandise to the subsequent violator whose entry has been liquidated and such liquidation has become final, thereby barring the assessment of marking duties.

The guidelines are amended to add a section dealing with cancellation of bond claims that arise from failing to redeliver merchandise that is marked with a false designation of origin in violation of the provisions of 15 U.S.C. 1124 and 1125. These guidelines, designated as a new paragraph F provide for mitigation less generous than that afforded violations involving failing to mark merchandise with the country of origin.

The guidelines for cancellation of claims for violation of other Customs statutes and regulations permit cancellation of claims incurred by first-time violators upon payment of an amount between one and five percent of the value of the merchandise. This guideline does not provide Customs with sufficient enforcement flexibility. Accordingly, Customs amends the guidelines to permit cancellation of claims incurred by first-time violators upon payment of an amount between one and fifteen percent of the value of the merchandise.

A new guideline has been formulated for cases that involve failure to provide a sample to Customs. Under current guidelines, if an importer fails to provide a sample and liquidated damages result, the importer will receive mitigation in the one to five percent range because this is considered to be a violation of other Customs statutes or regulations. If an importer has a violative shipment, and a sample will serve to provide evidence of the shipment's inadmissibility, the importer could benefit in mitigation from failing to provide that sample.

For example, if an import specialist requests a sample to determine whether a shipment of merchandise bears a genuine or counterfeit trademark and the importer provides the sample and a violation is determined to exist, any resultant claim for liquidated damages would be cancelled using the guidelines for trademark violative goods (gener-

ally a 25–50 percent result). Under current guidelines, by failing to provide a sample, the importer would be granted relief in the one to five percent range. The guidelines are amended to provide that a claim for liquidated damages for failure to provide a sample will be cancelled consistent with guidelines in effect for any violation that is suspected with regard to the sample.

Finally, a new guideline is promulgated which will provide that in any case where redelivery or compliance with country of origin marking occurs, but not in a timely manner (i.e., outside the 30-day redelivery period or any other redelivery period which may be designated by the district director), the claim shall be cancelled upon payment of $100 or one percent of the value of the shipment, whichever is higher, but in no case shall the amount exceed $1,000. This guideline will only be appropriate for compliance that occurs prior to the issuance of the Notice of Claim for Liquidated Damages.

Change to Section VI:

Section VI of the bond cancellation guidelines covers Guidelines for Cancellation of Claims Arising From Failure to Timely File Shipper's Export Declarations (SEDs). The guidelines provide for relief for the first and second violations incurred by a carrier, but after two violations, no relief is afforded from any claim. These guidelines do not take into account the fact that most carriers file large numbers of SEDs each year and that three violations may be a very small number when considering the total number of SEDs filed. Accordingly, Customs is amending the guidelines to remove the references to first or second violations. All claims will be cancelled upon payment of an amount between 25 and 50 percent of the claim but not less than $100, except that no relief shall be granted from any claims written for $50 or $100. If this mitigation does not have a deterrent effect upon a chronic violator, then cancellation upon payment of an amount exceeding 50 percent (or denial of relief) may be warranted. In order to promote administrative efficiency, the guidelines are also being amended to permit Option 1–type mitigation in failure to file SED cases.

Change to Section VII:

In Treasury Decision 92–81 (57 FR 37692), Customs published a Final Rule amending the Customs Regulations to provide for regulations specific to duty-free stores. The bond cancellation standards for violations of warehouse bond regulations are amended to make clear that they are also applicable to duty-free stores.

Under current policy, claims for liquidated damages for non-merchandise violations relating to the maintenance of a bonded warehouse are issued at $1,000 for each day that a violation continues. For example, under the provisions of section 19.12(a)(4) of the Regulations (19 CFR 19.12(a)(4)), a bonded warehouseman is required to update a permit file folder related to a bonded warehouse entry within two business days after any transaction related to that entry (generally a withdrawal for consumption) is accomplished. By failing to update within two business

days, he is in breach of his bond. If the violation continues for 100 business days, he will be liable for liquidated damages of $100,000. This has provided some overly harsh claims for liquidated damages for relatively minor violations.

Through this document, Customs amends Section VII of the Customs Bond Cancellation Standards to provide for a limit of $10,000 on any continuing warehouse bond violation not involving merchandise. The promulgation of this cap on assessment of the claims will not affect guidelines for cancellation currently in effect, but will serve to eliminate overly harsh assessments and concomitantly harsh cancellation amounts. The guidelines are also amended to permit implementation of Option 1 procedures in all warehouse bond cases that involve claims for liquidated damages based upon defaults not involving merchandise.

The current guidelines for claims arising from defaults involving merchandise do not accurately reflect commercial reality. The guidelines include a category of defaults arising from clerical error or mistake, that is a non-negligent, inadvertent error. Under Customs Directives issued concerning assessment of these claims, district directors are given broad enforcement discretion to issue claims when legitimate enforcement purposes are to be served. Issuance of claims for liquidated damages for violations arising from clerical error or mistake do not support any legitimate enforcement purpose. Accordingly, if a claim for liquidated damages is established and the warehouse proprietor can show that the claim arose from clerical error or mistake and no loss of revenue occurred, then the claim will be cancelled without payment. If a loss of revenue occurred, it shall be *prima facie* evidence that something other than clerical error or mistake occurred and other sections of the guidelines should be followed.

The guidelines for cancellation of claims arising from defaults involving merchandise which are based upon negligence do not distinguish between those violations involving merchandise that do not necessarily involve a threat to the revenue (i.e., manipulation of merchandise without Customs permit or not in accordance with the activity described in the permit) and those which do involve a threat to the revenue (i.e., removal of merchandise from the warehouse without permit, or failure to locate or account for merchandise in the warehouse.) The guidelines are amended to provide for a revenue-based distinction in violations involving merchandise. Violations involving merchandise which result from negligence but involve no loss of revenue shall be cancelled upon payment of an amount between one and fifteen percent of the value of the merchandise but not less than $100 nor more than $10,000. No distinction shall be made between violations involving restricted merchandise and violations involving merchandise which is not restricted; however, if the violation does involve restricted merchandise, that shall be considered to be an aggravating factor which will result in less generous mitigation. Violations involving merchandise which result from negligence but involve a potential loss of revenue shall be cancelled

upon payment of an amount between one and three times the loss of revenue on the merchandise which cannot be accounted for, unless that merchandise is restricted, in which case the claim shall be cancelled upon payment of an amount between three and five times the loss of revenue but in no case less than 10 percent of the value of such merchandise. If the violation is found to be intentional in nature, then no relief from the claim shall be granted.

Change to Section VIII:

Under Section VIII of the guidelines, a reference is made to cancellation of claims for liquidated damages arising from violation of airport security regulations as published in section 122.14 of the Customs Regulations (19 CFR 122.14). In Treasury Decision 90–82, the provisions of section 122.14 were renumbered as 19 CFR 122.181 et. seq. The guidelines are amended to reflect that change.

For violations involving unauthorized entry into a secured area, failure to openly display or possess the identification card, strip or seal, or failure to surrender identification upon demand by an authorized Customs officer, under current guidelines a first violation is cancelled upon payment of $200, a second violation is cancelled upon payment of $500 and a third or subsequent violation results in no mitigation. If a bond principal has three employees or contractors who enter into a secured area without authorization, three violations immediately occur and any benefit given for a first or second violation dissipates. In order to provide a district director with more administrative discretion, the first, second and third violation distinctions are being eliminated. The district director will be able to cancel any claim arising from the violative conduct described above upon payment of an amount between $250 and $500. A district director will always have the discretion to deny relief in these cases based upon articulable aggravating factors. Inasmuch as the district director will be afforded the noted discretion, old paragraph F of the guidelines, which permits greater mitigation to a prior violator who does not incur a violation for six months, is being eliminated.

The guidelines for airport security violations are also being amended to permit the district director to apply Option 1 mitigation procedures, if the facts of a particular case are undisputed and the circumstances surrounding such case so warrant.

Change to Section IX:

As with the guidelines relating to the cancellation of claims arising from violation of the warehouse bond, the guidelines for cancellation of claims arising from violation of the provisions of the Foreign Trade Zone bond also do not reference any cap on the assessment of claims for violations which do not involve merchandise. For purposes of liquidated damages assessment (as opposed to penalties which are assessed under the provisions of 19 U.S.C. 81s), as a matter of policy, the guidelines are amended to provide that claims will not be issued for any continuing violation in an amount that exceeds $10,000. The promulgation of this cap on assessment of the claims will not affect guidelines for cancella-

tion currently in effect, but will serve to eliminate overly harsh assessments and concomitantly harsh cancellation amounts.

The guidelines are also amended to permit implementation of Option 1 procedures in all foreign trade zone claims for liquidated damages based upon defaults not involving merchandise.

As with warehouse bond violations, the current guidelines for claims arising from defaults involving merchandise do not accurately reflect commercial reality. The guidelines include a category of defaults arising from clerical error or mistake, that is a non-negligent, inadvertent error. Under Customs Directives governing Foreign Trade Zones issued concerning assessment of these claims, district directors are given broad enforcement discretion to issue claims when legitimate enforcement purposes are to be served. Issuance of claims for liquidated damages for violations arising from clerical error or mistake do not support any legitimate enforcement purpose. Accordingly, if a claim for liquidated damages is established and the Foreign Trade Zone proprietor can show that the claim arose from clerical error or mistake and no loss of revenue occurred, then the claim will be cancelled without payment. If a loss of revenue occurred, that fact shall be *prima facie* evidence that something other than clerical error or mistake occurred and other sections of the guidelines should be followed.

The guidelines for cancellation of claims arising from defaults involving merchandise which are based upon negligence do not distinguish between those violations involving merchandise that do not necessarily involve a threat to the revenue (i.e., manipulation of merchandise in the zone without Customs permit or not in accordance with the activity described in the permit) and those which do involve a threat to the revenue (i.e., removal of merchandise from the zone without permit, or failure to locate or account for merchandise in the zone). The guidelines are amended to provide for a revenue-based distinction in violations involving merchandise. Violations involving merchandise which result from negligence but involve no loss of revenue shall be cancelled upon payment of an amount between one and fifteen percent of the value of the merchandise but not to exceed $10,000. No distinction shall be made between violations involving restricted merchandise and violations involving merchandise which is not restricted; however, if the violation does involve restricted merchandise, that shall be considered to be an aggravating factor which will result in less generous mitigation. Violations involving merchandise which result from negligence but involve a potential loss of revenue shall be cancelled upon payment of an amount between one and three times the loss of revenue on the merchandise which cannot be accounted for, unless that merchandise is restricted, in which case the claim shall be cancelled upon payment of an amount between three and five times the loss of revenue, but in no case less than 10 percent of the value of such merchandise. If the violation is found to be intentional in nature, then no relief from the claim shall be granted.

Change to Section X:

The current guidelines for cancellation of claims for liquidated damages arising from the failure to hold merchandise at the place of examination in violation of the provisions of section 113.62(f) of the Regulations (19 CFR 113.62(f)), are based on a standard that involves a determination by the deciding officer of a level of culpability (clerical error, negligence, intentional violation) of the bond principal. This standard is not followed in the guidelines in use for other similar misdelivery-type violations. Accordingly, through this document, Customs is abandoning the standard of finding a level of culpability.

In order to establish a violation under the provisions of 19 CFR 113.62(f), Customs must show that the bond principal obtained permission from Customs to have his merchandise examined at a place which is not in the charge of a Customs officer (e.g., his business premises, a Centralized Examination Station) and that the bond principal failed to: hold the merchandise at such place until released by Customs; transfer such merchandise to any place directed by Customs; or keep all seals and cording intact.

Through this document, Customs amends the current guidelines so that when a party fails to hold the merchandise for examination or fails to transfer the merchandise to another place upon instruction from Customs obtained before the merchandise was released, the claim will be cancelled upon the following terms: 1) if either the bond principal or surety files an entry summary and pays estimated duties, taxes and fees, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited; 2) if neither the bond principal nor surety files an entry summary and pays estimated duties, taxes and fees, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties, taxes and fees that would have been due plus an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited; 3) if the merchandise not held for examination was suspected of being restricted or prohibited, and the bond principal files an entry summary, pays estimated duties, taxes and fees and the merchandise was deemed admissible with that entry summary, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000; 4) if the merchandise not held for examination was suspected of being restricted or prohibited, and the bond principal does not file an entry summary or pay estimated duties or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties, taxes and fees plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250; and 5) if the violation is determined to be intentional in nature, no relief will be afforded.

For a violation which involves the failure to keep any Customs seal or cording intact until the merchandise is examined, the claim shall be can-

celled upon payment of an amount between $100 and $500 if there is no evidence to indicate the merchandise in the sealed or corded shipment was the subject of tampering. If there is evidence of tampering, the claim shall be cancelled upon payment of an amount equal to the value of any missing merchandise.

Finally, an additional sentence shall be added to the guidelines to indicate that when the term "value" is used in any provision of these guidelines it means value as determined under 19 U.S.C. 1401a and not domestic value.

The new Section XI of the bond cancellation standards relating to CES operators will employ the same guidelines as those described in the changes to Section X with regard to violations involving failure to keep merchandise safe or deliver that merchandise to the CES.

The text of the guidelines, as modified, is set forth below.

Dated: April 12, 1994.

SAMUEL H. BANKS,
Acting Commissioner of Customs.

[Published in the Federal Register, April 14, 1994 (59 FR 17830)]

[Attachment]

[ATTACHMENT]

GUIDELINES FOR CANCELLATION OF CLAIMS FOR LIQUIDATED DAMAGES

I. GUIDELINES FOR CANCELLATION OF CLAIMS FOR LIQUIDATED DAMAGES FOR LATE FILING OF ENTRY SUMMARY CLAIMS (19 CFR 142.15 and 113.62(b)), LATE PAYMENT OF ESTIMATED DUTIES CLAIMS (19 CFR 113.62(a)(1)(i) and 113.62(k)(4)), AND LATE REMISSION OF COLLECTED PASSENGER PROCESSING FEES (19 CFR 113.64(a))

A. *Failure to file entry summaries timely.* Pursuant to section 172.22(d) of the Customs Regulations, claims for liquidated damages for failure to file entry summaries timely shall be issued and mitigated as follows:

1. *Notification of liquidated damages incurred; modified CF 5955A.* Notices of liquidated damages incurred shall be issued on a modified CF 5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. Pursuant to the provisions of 19 CFR 172.11, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. *Calculation of mitigated amount; entry summary filed late.* The amounts to be set forth under Option 1 on the CF 5955A shall be calculated as follows:

a. Dutiable entry summary filed late.

The bond principal or surety shall be charged an administrative fee of $100 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary.

b. Duty-free entry filed late.

The bond principal or surety shall be charged an administrative fee of $100 plus interest on any withheld fees and taxes calculated at the rate of 0.1 percent (.001) per calendar day that the entry summary was late.

c. Dutiable entry rejected and refiled late with no withheld duty, fees and taxes.

The bond principal or surety shall be charged $100.

d. Dutiable entry filed timely but rejected, refiled late with additional duties, fees and taxes owed.

The bond principal or surety shall be charged an administrative fee of $100 plus interest calculated on withheld duties, fees and taxes only, calculated at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late.

3. *Entry summary not filed.*

a. If at the time the demand for liquidated damages is issued the entry summary has not been filed, a claim for liquidated damages for non-filing of the entry summary shall be issued. No mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must file the entry summary and pay estimated duties, fees and taxes or the surety must deposit estimated duties, fees and taxes.

b. Once the estimated duties, fees and taxes have been paid, a notice of claim for liquidated damages shall be issued for late filing of the entry summary, replacing the earlier

notice of claim for non-filing of the entry summary. The late filing claim issued as a result of a non-filing situation shall be cancelled in accordance with the following guidelines once the estimated duties, fees and taxes have been deposited.

i. The bond principal shall be charged an administrative fee of $200 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the entry summary was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the duty amount shall be rounded down to the next dollar.

ii. When the surety deposits estimated duties, fees and taxes, the surety shall be charged an administrative fee of $200 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of the estimated duties, fees and taxes.

c. If no response from the principal or surety is received within 60 days from the date of issuance of the non-filing claim, a claim for liquidated damages for late filing shall be issued to both the principal and surety, but no Option 1 mitigation shall be offered.

4. *Late filing of statement summaries.*

a. If a Customs broker files an entry statement including multiple entry summaries for processing in an untimely manner, the district director may, in his or her discretion, cancel all claims for liquidated damages arising because of the late filing in accordance with the following standard:

The broker shall be charged, as an Option 1 amount, an administrative fee of $500 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary. This mitigation shall be afforded with regard to any first violation by a broker who is responsible for late submission of a statement summary. This mitigation may be afforded with regard to a subsequent violation, based upon the discretion of the district director.

b. Petition for relief.

i. If the broker files a petition for relief which demonstrates that the violation did not occur or occurred as a result of Customs error, all claims arising from the late filing should be cancelled without payment.

ii. If the broker files a petition for relief which fails to demonstrate that the violation did not occur or occurred as a result of Customs error, the claim shall be cancelled upon payment of $700 plus interest on any withheld fees and taxes calculated at the rate of 0.1 percent (.001) per calendar day that the entry statement was late.

c. Failure to pay Option 1 amount or petition for relief.

If a broker fails to pay the Option 1 amount or fails to petition for relief, Customs shall issue appropriate claims for liquidated damages against all bond principals and sureties and the mitigation guidelines enumerated in paragraph B. above shall be followed. In no case shall the $500 plus interest Option 1 amount afforded to brokers in these cases be afforded to principals or sureties.

5. *Suspension of immediate release privileges.* If an importer fails to meet his obligations with regard to claims for liquidated damages for late filing of entry summaries, the district director is always empowered to suspend immediate release privileges of the importer. Alternatively, the district director may choose to assess liquidated damages but not offer an Option 1 alternative.

B. *Late payment of estimated duties.* Claims for liquidated damages for late payment of estimated duties shall be issued and mitigated as follows:

1. *Notification of liquidated damages incurred; estimated duties not paid.* If at the time the demand for liquidated damages is issued the estimated duties, fees and taxes have not been paid, the claim shall be issued on a CF 5955A citing 19 CFR 113.62(a)(1)(i) and 19 CFR 113.62(k)(4) as the bond conditions violated. No mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must pay estimated duties, fees and taxes or the surety must deposit estimated duties, fees and taxes.

2. *Notification of liquidated damages incurred; estimated duties paid late; modified CF 5955A.* If at the time of issuance of the demand for liquidated damages, estimated duties, fees and taxes have been paid, the Notices of Claim for Liquidated Damages incurred shall

be issued on a modified CF 5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. Pursuant to the provisions of 19 CFR 172.11, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs or financial institution error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs or financial institution error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

3. *Calculation of Option 1 amounts.*

a. If estimated duties, taxes and charges are paid untimely, but payment is made before Customs is required to issue a Notice of Claim as described in Subparagraph B(1) above, the bond principal or surety shall be charged an administrative fee of $100 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary.

b. If estimated duties, taxes, fees and charges are paid untimely by the bond principal after Customs has issued a claim for liquidated damages for non-payment of estimated duties in accordance with Subparagraph B(1) above, the bond principal shall be charged an administrative fee of $200 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the payment was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the duty amount shall be rounded down to the next dollar.

c. When the surety deposits estimated duties, fees and taxes, in response to a demand made in accordance with Subparagraph B(1) above, the surety shall be charged an administrative fee of $200 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of the estimated duties, fees and taxes.

C. *Failure to remit collected passenger processing fees.* Claims for liquidated damages for untimely payment to Customs of collected passenger processing fees shall be issued and mitigated as follows:

1. *Notification of liquidated damages incurred; passenger processing fees not remitted.* If at the time the demand for liquidated damages is issued the collected fees have not been remitted to Customs, the claim shall be issued on a CF 5955A citing 19 CFR 113.64(a) and 19 CFR 24.22(g) as the bond condition and regulations violated. No mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must remit the collected fees or the surety must deposit an amount equal to those unremitted fees.

2. *Notification of liquidated damages incurred; estimated duties paid late; modified CF 5955A.* If at the time of issuance of the demand for liquidated damages, the collected fees have been remitted, the Notices of Claim for Liquidated Damages incurred shall be issued on a modified CF 5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. Pursuant to the provisions of 19 CFR 172.11, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall

grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

3. *Calculation of Option 1 amounts.*

a. If the collected passenger processing fees are remitted untimely, but are remitted so that Customs is not required to issue a Notice of Claim as described in Subparagraph C(1) above, the bond principal or surety shall be charged an administrative fee of $200 plus interest on the unremitted fees at the rate of 0.1 percent (.001) per calendar day that the fees were late. The interest amount shall be rounded up to the next dollar.

b. If the collected but unremitted fees are remitted untimely by the bond principal after Customs has issued a claim for liquidated damages for failure to remit those fees in accordance with Subparagraph C(1) above, the bond principal shall be charged an administrative fee of $1,000 plus interest on the unremitted fee at the rate of 0.1 percent (.001) per calendar day that the payment was late. The interest amount shall be rounded up to the next dollar.

c. When the surety deposits an amount equal to the collected but unremitted fees, in response to a demand made in accordance with Subparagraph C(1) above, the surety shall be charged an administrative fee of $1,000 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of an amount equal to the collected but unremitted fees.

D. *Referral of petitions to Headquarters.* The district director may always refer a petition for relief to Customs Headquarters, Penalties Branch, for advice or guidance. This referral is at the discretion of the district director and shall not be allowed to a petitioner as a matter of right.

II. GUIDELINES FOR CANCELLATION OF CLAIMS FOR LIQUIDATED DAMAGES FOR VIOLATION OF TEMPORARY IMPORTATION BONDS (19 CFR 10.39)

A. Cancel the claim without payment if the breach was for the benefit of the United States.

B. Cancel the claim upon payment of an amount equal to the merchandise processing fee that would have been due on the merchandise had an entry for consumption been filed (but not less than $100) if:

1. The breach was due wholly to circumstances beyond the importer's control and which could not have been reasonably anticipated i.e., destruction by accidental fire, documented theft

2. Merchandise which was the subject of the entry would have been entitled to free entry as domestic products exported and returned or under any other duty-free provision.

C. If the merchandise was exported or destroyed timely but Customs was not notified in a timely manner so as to cancel the bond, cancel the claim for liquidated damages upon payment of an amount between 1 and 5 percent of the claim (depending on aggravating or mitigating factors present), but not less than $100.

D. If the merchandise was exported or destroyed but outside the bond period, cancel the claim for liquidated damages upon payment of an amount between 5 and 10 percent of the claim (depending on aggravating or mitigating factors present), but not less than $200.

1. Examples of aggravating factors:

a. Importer is uncooperative, e.g., fails to provide information to Customs.

b. A large number of violations of this type by the importer in relation to the total number of transactions engaged in.

c. Importer's willful disregard of or carelessness toward responsibilities under applicable statutes, regulations or bond.

2. Examples of mitigating factors:

a. Importer cooperates with Customs personnel in resolution of the case.

b. Importer takes immediate remedial action.

c. Lack of experience in importing.

d. A small number of violations of this type in relation to the number of transactions engaged in.

E. If Customs designates a TIB entry for examination upon exportation or for supervision of destruction and the importer fails to obtain export examination or supervision of destruction, cancel the claim upon payment of an amount between 10 and 25 percent of the claim, but not less than $300, depending on the presence of aggravating or mitigating factors.

F. If the merchandise is sold, the following guidelines should be followed.

1. Grant relief equal to one times the duty on merchandise which is sold but later exported within the bond period.

2. Grant relief to one and one-half times the duty on merchandise which is sold but later exported outside the bond period.

3. If merchandise is sold but later exported outside the bond period, grant no relief if the bond amount represents 110 percent of the duties on the merchandise.

G. Grant no relief from the claim for liquidated damages in the following cases:

1. When the merchandise has entered into the commerce of the United States. If a petitioner claims the merchandise has been exported or destroyed, but does not present satisfactory proof of such exportation or destruction, the merchandise shall be presumed to have entered the commerce for purposes of these guidelines.

2. When the importer requests that a TIB entry be amended to a consumption entry after the merchandise has been released from Customs custody.

3. When TIB merchandise is sold, but not exported.

III. GUIDELINES FOR CANCELLATION OF CLAIMS FOR SHORTAGE, IRREGULAR DELIVERY, NON-DELIVERY OR DELIVERY DIRECTLY TO THE CONSIGNEE OF IN-BOND MERCHANDISE (19 CFR 18.8)

A. *Documents filed late or merchandise delivered late.*

1. *Modified CF 5955A. Notices of liquidated damages incurred for this violation may be issued on a modified CF 5955A.* If a modified form is issued, it shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* The bond principal or surety may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, the principal or surety waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. If merchandise is delivered untimely to the port of destination or exportation (not within 15 days if transported by air, 30 days if transported by vehicle, or 60 days if transported by vessel) but is otherwise intact, cancel the claim upon payment of an amount between $100 or $500, depending on the presence of aggravating or mitigating factors.

3. If merchandise is delivered timely but the documentation is not filed with Customs within 2 days of arrival in the port of delivery, cancel the claim upon payment of an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the bonded carrier consistently fails to deliver paperwork timely and Customs business is impeded by these repeated failures, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, may be sought to determine appropriate mitigation.

B. *Failure to deliver or shortage.*

1. If the carrier shows that the merchandise was entered and duties, fees and taxes were paid (on any Immediate Transportation bonded movement) or that the merchandise was exported but not in accordance with regulation (on any Transportation and Exportation or Direct Exportation bonded movement), the claim may be cancelled upon payment of an amount between $100 and $1,000 depending on the presence of aggravating or mitigating factors.

2. If the bonded carrier can prove that the merchandise was never received or landed, the claim should be cancelled without payment.

3. If the carrier cannot prove that the merchandise was entered and duties, taxes and fees paid or that it was properly exported or that it was never received or landed, the claim may be cancelled upon payment of an amount equal to the duties, fees and taxes that would have been due on the subject merchandise had it been entered for consumption plus an amount between $100 and $1,000.

4. If the merchandise delivered short is restricted or prohibited, and the carrier proves that an entry summary was filed, estimated duties were paid and the merchandise was deemed admissible with that entry summary, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000.

5. If the merchandise delivered short is restricted or prohibited, and the carrier does not prove that an entry summary was filed, estimated duties, taxes and fees were paid or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250.

6. If the bonded carrier consistently has shortages and failure to deliver cases and Customs business is impeded by these repeated failures, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, may be sought to determine appropriate mitigation.

C. *Delivery of merchandise directly to the consignee.*

1. If the carrier can show that the merchandise was entered and duties, taxes and fees paid, the claim may be cancelled upon payment of an amount between $100 and $1,000 depending on the presence of aggravating or mitigating factors.

2. If the carrier can prove that the merchandise was never received or landed, the claim should be cancelled without payment.

3. If the carrier cannot prove that the merchandise was entered and duties, taxes and fees paid or or that it was never received or landed, the claim should be cancelled upon payment of an amount equal to the duties, fees and taxes that would have been due on the subject merchandise had it been entered for consumption plus an amount between $100 and $1,000.

4. If the merchandise delivered directly to the consignee is restricted or prohibited, and the carrier proves that an entry summary was filed, estimated duties, taxes and fees were paid and the merchandise was deemed admissible with that entry summary, the claim should be cancelled upon payment of an amount between $100 and $1,000.

5. If the merchandise delivered directly to the consignee is restricted or prohibited, and the carrier does not prove that an entry summary was filed, estimated duties, taxes and fees were paid or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250.

6. If the bonded carrier consistently delivers merchandise directly to the consignee, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, may be sought to determine appropriate mitigation.

7. If merchandise delivered directly to the consignee qualifies for entry via the informal entry process, and entry is made and duties, fees and taxes are paid on the improperly delivered shipment through that informal entry process, then the claim may be cancelled upon payment of an amount between $50 and $500, depending on the presence of aggravating or mitigating factors.

8. If merchandise is delivered directly to the consignee, and entry is made and duties, fees and taxes are paid on the improperly delivered shipment and the carrier brings the violations to the attention of Customs, the claims may be cancelled upon payment of $25.

D. *Aggravating and mitigating factors.*

1. Examples of aggravating factors:

a. Carrier is uncooperative, e.g., fails to provide information to Customs.

b. A large number of violations of this type by the carrier in relation to the total number of transactions engaged in.

c. Carrier's willful disregard of or carelessness toward responsibilities under applicable statutes, regulations or bond.

2. Examples of mitigating factors:

a. Carrier cooperates with Customs personnel in resolution of the case.

b. Carrier takes immediate remedial action.

c. Carrier inexperienced in handling in-bond shipments of the type in question.

d. A small number of violations of this type in relation to the number of transactions engaged in.

e. Circumstances intervened that were beyond the carrier's control (not negligence or error).

IV. GUIDELINES FOR CANCELLATION OF CLAIMS INVOLVING FAILURE TO REDELIVER MERCHANDISE INTO CUSTOMS CUSTODY OR FAILURE TO COMPLY WITH A NOTICE OF REFUSAL OF ADMISSION ISSUED BY ANOTHER GOVERNMENT AGENCY (19 CFR 141.113, 113.62(d) OR 113.62(e))

A. *Statutes and regulations enforced on behalf of the Food and Drug Administration (FDA) and the Consumer Product Safety Commission (CPSC).*

1. The provisions of 21 CFR 1.97 (FDA Regulations) and 16 CFR 1500.271 (CPSC Regulations) require that the district director of Customs and the district director of the other agency be in agreement as to the amount to be accepted in cancellation of the claim for liquidated damages. All petitions for relief received in FDA and CPSC cases must be referred to those agencies for recommendation. By regulation Customs must follow the recommendation of FDA or CPSC.

2. EXCEPTION: When the sole requirement which has been imposed by FDA on refused merchandise is exportation or destruction under Customs supervision, apply guidelines to be used in the case of other Customs statutes or regulations in Subparagraph K below. See 21 CFR 1.97 and HQ Ruling 617367.

3. If any merchandise which is requested for examination by the other agency is available for examination at the place designated by such other agency but is not examined for any reason, Customs will not issue liquidated damages with regard to such merchandise or will cancel any claim related to such merchandise without payment.

4. If there is a compelling reason to depart from the recommendation of the other agency, state such reason in a referral memorandum and forward the case record to Customs Headquarters, Office of Regulations and Rulings, Penalties Branch.

B. *Statutes and regulations enforced on behalf of other agencies (not FDA or CPSC).*

1. Any petition received should be forwarded to the other agency for recommendation. As a rule, the recommendation of the other agency as to appropriate mitigation will be followed.

2. Customs is not required by regulation to follow the recommendation of agencies other than FDA and CPSC. If the district director of Customs finds the recommendation of the other agency to be arbitrary and capricious, he may modify the recommendation to be consistent with Customs guidelines.

C. *Country of origin marking cases—merchandise marked with the country of origin after liquidation of the entry and outside the 30-day marking period.*

1. If the merchandise is marked outside the 30-day marking period and after liquidation of the entry, the entry should be reliquidated if liquidation has not become final, and marking duties should be assessed and collected.

2. If marking duties have been assessed and collected, cancel the claim upon payment of one percent of the value of the merchandise, but not less than $100 for a first-time violation. Cancel upon payment of between one and five percent but not less than $250 for a subsequent violation.

3. Grant no relief in any case until marking duties are assessed and collected; however, if liquidation is final and marking duties cannot be assessed, cancel upon payment of an amount equal to 11 percent of the value of the merchandise but not less than $100 for a first violation and between 11 and 15 percent but not less than $250 for a subsequent violation.

D. *Country of origin marking cases—merchandise marked outside the 30-day period, but before liquidation.*

1. If the merchandise is properly marked with the country of origin outside the 30-day period but before liquidation of the entry, liquidated damages are appropriate, but marking duties are not due.

2. For a first time violation, if the merchandise has been marked under Customs supervision outside the 30-day period, cancel the claim upon payment of an amount equal to one percent of the value of the merchandise, but not less than $100.

3. For subsequent violations, cancel upon payment of an amount between one and five percent of the value of the merchandise but not less than $250 depending upon the number of violations and the presence of aggravating and mitigating factors.

E. *Marking cases—merchandise not marked with the country of origin.*

1. Relief from liquidated damages incurred is contingent upon deposit of marking duties. See 19 CFR 134.54(c).

2. For a first-time violation, where marking duties have been assessed and collected, cancel the claim upon payment of an amount between 10 and 25 percent of the value depending on the presence of aggravating or mitigating factors.

3. If it is a subsequent violation and marking duties have been assessed and collected, cancel the claim upon payment of an amount between 25 and 50 percent of the value of the merchandise.

4. If marking duties have been assessed but not collected, grant no relief. If liquidation of the entry has become final, thereby barring the assessment of marking duties, cancel as follows:

a. If it is a first-time violation, cancel the claim for liquidated damages upon payment of an amount between 20 and 35 percent of the value.

b. If it is a second or subsequent violation, cancel the claim for liquidated damages upon payment of an amount between 35 and 60 percent of the value.

5. Examples of aggravating factors:

a. Offender is uncooperative, e.g., fails to provide information to Customs when requested.

b. A large number of violations of this type by the offender in relation to the total number of transactions engaged in.

c. Offender's experience in importing.

d. Offender's willful disregard or carelessness toward responsibilities under the applicable statutes or regulations.

6. Examples of mitigating factors:

a. Contributory Customs error, e.g., offender demonstrates that he acted in accordance with instructions given by Customs personnel.

b. Offender cooperates with Customs personnel in resolution of the case.

c. Offender takes immediate remedial action.

d. Offender's lack of importing experience.

e. A small number of violations of this type by the offender in relation to the number of transactions engaged in.

F. *False designation of origin cases.*

1. When merchandise is marked with a false designation of origin, and a claim for liquidated damages for failure to redeliver that merchandise results and the offender can demonstrate that the merchandise was marked with the correct country of origin outside the 30-day redelivery period, the claim should be cancelled upon payment of an amount equal to one percent of the value of the merchandise, but not less than $100 for a first violation. For subsequent violations of this type, the claim should be cancelled upon pament of an amount equal to one to five percent of the value of the merchandise, but not less than $250.

2. When merchandise is marked with a false designation of origin and the merchandise is not properly marked with the true country of origin and a first violation is involved, the claim should be cancelled upon payment of an amount between 25 and 50 percent of the value of the merchandise.

3. For a subsequent violation where the merchandise is not properly marked with the true country of origin, the claim should be cancelled upon payment of an amount equal to no less than 50 percent of the value of the merchandise.

G. *Quota/visa violative merchandise.*

1. If the importer fails to redelivery visa-violative merchandise, but subsequent to the assessment of the claim produces a valid visa or visa waiver, cancel the claim upon pay-

ment of an amount between one and five percent of the value of the merchandise, but not less than $100, depending on the presence of aggravating or mitigating factors.

2. If no visa is ever produced, and it is a first-time violation, cancel the claim upon payment of an amount between 20 and 30 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. If no visa is ever produced, and it is a subsequent violation, cancel the claim upon payment of no less than 40 percent of the value of the merchandise.

4. If the importer fails to redeliver quota merchandise, and it is a first-time violation, cancel the claim upon payment of an amount between 25 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating circumstances.

5. For subsequent quota redelivery violations, cancel the claim upon payment of no less than 50 percent of the value of the merchandise.

6. For merchandise that is not redelivered which is subject to both quota and visa restrictions, follow guidelines for cancellation of claims relating to quota-violative merchandise.

H. *Copyright-violative merchandise.*

1. If the importer fails to redeliver copyright-violative merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise from the copyright holder, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than $100.

2. If no authorization is received from the copyright holder, cancel a first-time violation upon payment of an amount between 20 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. For subsequent violations where no authorization of the copyright holder is receved, cancel the claim upon payment of an amount equal to no less than 50 percent of the value of the merchandise. In order to receive any relief, extraordinary mitigating factors must be shown.

I. *Trademark-violative merchandise.*

1. If the importer fails to redeliver trademark-violative merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise from the trademark holder, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than $100.

2. If no authorization is received from the trademark holder, cancel a first-time violation upon payment of an amount between 20 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. For subsequent violations where no authorization of the trademark holder is received, cancel the claim upon payment of an amount equal to no less than 50 percent of the value of the merchandise. In order to receive any relief, extraordinary mitigating factors must be shown.

4. As a general rule, if the merchandise is counterfeit, no relief shall be granted. If the merchandise is genuine, that fact shall be considered as a mitigating factor in accordance with the above guidelines.

J. *Failure to provide a sample.*

1. If the importer fails to provide a sample within the time period prescribed, but then does provide the sample subsequent to the issuance of liquidated damages and can prove to the satisfaction of the import specialist that the sample is, in fact, from the shipment in question and the merchandise is not violative of any provision of law regarding its admissibility, the claim for liquidated damages may be cancelled upon payment of an amount between one and five percent of the value of the merchandise in the shipment, but not less than $100.

2. If the importer fails to provide a sample, cancel the claim consistent with guidelines for the violation which the sample was being examined. For example, if a sample is sought to determine whether merchandise is copyright-violative, and the importer fails to provide a sample, cancel the claim consistent with guidelines for failure to redeliver copyright-violative merchandise where no retroactive license is given.

K. *Other Customs-enforced statutes and regulations.*

1. If the merchandise is not redelivered for any reason not enumerated above, the claim may be cancelled upon payment of between 1 and 10 percent of the value of the merchandise depending upon the presence of aggravating or mitigating factors.

2. For subsequent violations, cancel the claim upon payment of an amount between 10 and 50 percent of the value of the merchandise, depending upon the presence of aggravating or mitigating factors.

3. If the issue is Customs supervision of exportation or destruction of merchandise which is the subject of a notice of refusal of admission issued by FDA or CPSC, and such exportation or destruction occurs, but not under supervision, cancel the claim in accordance with guidelines enumerated in subparagraphs K(1) or K(2) directly above.

4. If exportation or destruction (when ordered) never occurs, grant no relief.

5. Claims for liquidated damages arising for failure to comply with special marking for watch and clock movements, cases and dials as required by Chapter 91, Additional U.S. Note 4, United States Tariff Schedule (19 U.S.C. 1202) shall be cancelled in accordance with the guidelines promulgated subparagraphs K(1) or K(2) directly above.

V. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM FAILURE TO PROVIDE MISSING DOCUMENTS (19 CFR 113.42)

A. *Discretionary application of $25 provision.* The regulatory provisions which permit cancellation of the bond upon payment of $25 are discretionary. In lieu of following such provision, the following guidelines should be used.

B. *Issuance of modified CF 5955A.* A modified CF5955A similar to that issued in cases involving late filing of entry summaries shall be issued in missing document cases.

1. *Option 1.*

a. Petitioner may pay a specified sum within 60 days and the case will be closed.

b. Such payment shall act as a waiver of his right to file a petition.

2. *Option 2.*

a. Normal petitioning procedures are in effect.

b. Mitigation shall not be permitted to an amount less than $100 greater than that afforded under Option 1 unless extraordinary mitigating factors can be shown.

c. Petitions shall be limited to the following issues:

i. Circumstances causing the delay in filing of the document.

ii. Extent of the lateness.

iii. Past record of the importer.

iv. Lack of intent to file documents untimely.

C. *Missing documents not provided.* When a claim for liquidated damages is issued and the missing documents have not been provided (as opposed to being provided untimely), a modified CF 5955A should not be issued.

D. *Calculation of mitigated amount.*

1. Document other than invoice filed late—cancel upon payment of $100.

2. Invoice filed late:

a. No resulting duty advance—cancel upon payment of $100.

b. Resulting duty advance—cancel upon payment of $100 plus 0.1 percent of amount of duty advance for each calendar day late.

3. Document not filed:

a. If absence of document will not affect duty due, cancel upon payment of $200.

b. If absence of document impedes Customs ability to appraise merchandise, cancel upon payment of $200 plus further duties determined by Customs to be owing after a reasonable appraisal of merchandise is made.

4. Document upon which a claim of conditionally free or reduced duty entry is based:

a. Filed late—Cancel upon payment of $100 plus 0.1 percent per calendar day late of duty that would have been due had the entry been liquidated as fully dutiable. This mitigation is not affected by the fact that the late-filed documents substantiated the conditionally free or reduced duty claim.

b. Non-filing.

i. For the first violation cancel upon payment of $200 plus liquidation of the entry as fully dutiable.

ii. For second or subsequent violation, cancel upon payment of $400 plus liquidation of the entry as fully dutiable.

E. *Continuous course of conduct.*

1. By an importer. If there is a continuing course of conduct by an importer where conditionally free entry is claimed, but documents supporting such claim are regularly missing from the entry and are not provided, the presumption after the fourth violation shall be

one of bad faith in the filing of the entry as conditionally free. No relief from the claim should be afforded.

2. By a customs broker. If the violator is a Customs broker, a civil monetary penalty for violation of the provisions of title 19, United States Code, section 1641, may be appropriate.

F. *Second or subsequent offenses.*

Except as noted in subparagraph E above, second or subsequent offenses will not be considered in cancellation of claims other than as relating to importers' past record in consideration of petitions for relief.

VI. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM FAILURE TO TIMELY FILE SHIPPER'S EXPORT DECLARATIONS (15 CFR 30.24)

A. *Notification of liquidated damages; modified CF 5955A.* Notices of liquidated damages incurred may be issued on a modified CF 5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

1. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

2. *Option 2.* Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount; however, in no case can the amount afforded in mitigation exceed the amount of the original claim.

B. *Assessment amounts.*

1. $50 per day for each of first three days late.
2. $100 per day for each day late beyond three.
3. Maximum assessment is $1,000.

C. *Mitigation guidelines.*

1. For each offense, the claim for liquidated damages may be cancelled upon payment of an amount between 25 and 50 percent of the claim, but not less than $100.

2. NOTE: All claims assessed for $50 or $100 (1 or 2 days late) will receive no mitigation.

3. If a carrier has a poor record of compliance with shipper's export declaration filing requirements as compared to other carriers in a district, and mitigation in accordance with subparagraph (B)(1) above has had no deterrent effect, relief from the claim for liquidated damages may be denied.

VII. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM VIOLATION OF WAREHOUSE PROPRIETOR'S BOND (19 CFR PART 19, 19 CFR 113.63)

The following guidelines apply to violations involving bonded warehouse proprietors and duty-free store operators.

A. *Defaults involving merchandise.* Defaults involving merchandise include violations involving merchandise which:

1. Cannot be located or accounted for in a bonded warehouse.
2. Has been removed from a bonded warehouse without a Customs permit.
3. Has been deposited, manipulated, manufactured, or destroyed in a bonded warehouse:
   a. Without proper Customs permit;
   b. Not in accordance with the description of the activity in the permit; or
   c. In the case of Class 6 warehouses, not manufactured in accordance with the formula specified in section 19.13(e) of the Customs Regulations (19 CFR 19.13(e)).

B. *Defaults not involving merchandise.* Defaults not involving merchandise include those instances of failure, other than those involving merchandise, to comply with Cus-

toms laws and regulations. The same act shall not be regarded as both a default involving merchandise and a default not involving merchandise.

C. *Defaults involving merchandise; petitions.* Petitions received in cases arising from defaults involving merchandise should be processed in accordance with the following.

1. If the breach resulted from clerical error or mistake (a non-negligent inadvertent error), the claim should be cancelled without payment.

2. If the breach resulted from negligence but no threat to the revenue occurred (e.g., the merchandise was not manipulated in accordance with the permit to manipulate) the claim should be cancelled upon payment of an amount between one and 15 percent of the value of the merchandise involved in the breach, but not less than $100 nor more than $10,000. If the merchandise involved in the breach is restricted merchandise, that shall be considered an aggravating factor which shall result in mitigation on the higher end of the range.

3. If the breach resulted from negligence and a potential loss of revenue resulted (e.g., merchandise cannot be located in the warehouse, merchandise is removed from the warehouse without a permit), the claim shall be cancelled upon payment of an amount between one and three times the loss of revenue (loss of revenue to include duties, fees and taxes), but not less than $100. If the merchandise involved in the breach is restricted merchandise, the claim shall be cancelled upon payment of an amount between three and five times the loss revenue but in no case less than 10 percent of the value of such merchandise.

4. If the breach is intentional (e.g., the warehouse proprietor conspires to remove merchandise from the warehouse without proper entry), there will be no relief granted from liquidated damages.

5. Aggravating factors.

a. Principal's failure or refusal to cooperate with Customs.

b. Large number of violations compared to number of transactions handled.

c. Experience of principal.

d. Principal's carelessness or willful disregard toward its responsibilities.

6. Mitigating factors.

a. Contributory error by Customs.

b. Small number of violations compared to number of transactions handled.

c. Remedial action taken by principal.

d. Cooperation with Customs.

e. Lack of experience of principal.

f. Merchandise which cannot be located or released without permit is returned to Customs custody.

D. *Defaults not involving merchandise; modified CF 5955A.* Defaults not involving merchandise shall be processed in accordance with the following guidelines.

1. *Modified CF 5955A.* Notices of liquidated damages incurred may be issued on a modified CF 5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur. If the petitioner fails to demonstrate that the violation did not occur, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. *Maximum assessments.* In cases involving violations which do not involve merchandise which are assessed at $1,000 for each business day that the violation continues, a maximum of $10,000 shall be assessed for any one such continuing violation unless the district director can articulate a legitimate enforcement purpose for exceeding said limit. These claims shall be cancelled in conformance with the terms of these guidelines.

3. *Clerical error.* If the breach resulted from clerical error, the claim may be cancelled without payment.

4. *Negligence.* If the breach resulted from negligence, the claim may be cancelled upon payment of an amount between $100 and $250 per default actually assessed, depending on the presence of aggravating or mitigating factors. For example, if a document is filed 100 days late, Customs, by policy, will generally limit the assessment to $10,000. Mitigation will be based on the $10,000 actual assessment and not relate to the $100,000 potential assessment.

5. *Intentional violation.* If the breach was intentional, no relief shall be granted.

VIII. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM VIOLATION OF AIRPORT SECURITY REGULATIONS (19 CFR 122.181 ET SEQ.)

A. *Assessment of claims for liquidated damages; Modified CF 5955A.* Notices of liquidated damages incurred may be issued on a modified CF 5955A if the violation is of a type that warrants mitigation. The modified form shall specify two options from which the petitioner may choose to resolve the demand. The modified form should not be offered in any situation where the district director anticipates that substantial factual or legal issues may be raised.

1. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

2. *Option 2.* Petition for relief. Pursuant to the provisions of 19 CFR 172.11, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

B. *Mitigation guidelines.*

1. Failure to conduct a background investigation or failure to retain background investigation records:

a. No mitigation unless extraordinary mitigating circumstances exist.

b. An example of an extraordinary mitigating circumstance would be destruction of records by accidental fire or act of God.

2. Unauthorized entry in secured area, failure to openly display or possess identification card, strip or seal or failure to surrender identification upon demand by an authorized Customs officer, cancel the claim upon payment of an amount between $250 and $500.

3. Failure to return, failure to report loss or theft of identification card, strip or seal or failure to notify district director that employee no longer requires access to a secured area:

a. First violation—cancel upon payment of $500.

b. Second or subsequent violation—grant no relief.

4. Presentation of an identification card, strip or seal by a person other than to whom it was issued:

a. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee, agent or contractor used the card, strip or seal in an improper manner and it had given warnings about such conduct to all its employees, agents or contractors.

b. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in (B)(4)(a) above, cancel the claim upon payment of $200.

c. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.

5. Refusal of an employee, agent or contractor to obey any proper order of a Customs officer or any Customs order, rule or regulation.

a. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee, agent or contractor had acted contrary to proper order, rule or regulation and it had given warnings about such conduct to all its employees, agents and contractors.

b. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in subparagraph (B)(5)(a) above, cancel upon payment of between $200 and $500.

c. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.

IX. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM VIOLATION OF FOREIGN TRADE ZONE REGULATIONS (19 CFR PART 146, 19 CFR 113.73)

A. *Defaults involving merchandise.* Defaults involving merchandise include those violations relating to merchandise which:

1. Cannot be located or accounted for in the activated area of a foreign trade zone;

2. Has been removed from the activated area of the zone without a proper Customs permit; or

3. Has been admitted, manipulated, manufactured, exhibited, or destroyed in the activated area of a zone:

a. Without proper Customs permit; or

b. Not in accordance with the description of the activity in the Customs permit.

B. *Defaults not involving merchandise.* Default not involving merchandise means any instance of failure, other than one involving merchandise or late payment of the annual fee, to comply with the laws or regulations governing foreign trade zones. A default involving one zone lot or unique identifier may not be combined with a default under another lot or unique identifier.

C. *Defaults involving merchandise; petitions.* Claims arising from defaults involving merchandise should be processed in accordance with the following:

1. If the breach resulted from clerical error or mistake (a non-negligent inadvertent error), the claim should be cancelled without payment.

2. If the breach resulted from negligence but no threat to the revenue occurred (e.g., the merchandise was not manipulated in accordance with the permit to manipulate) the claim should be cancelled upon payment of an amount between one and 15 percent of the value of the merchandise involved in the breach, but not less than $100 nor more than $10,000. If the merchandise involved in the breach is restricted merchandise, that shall be considered an aggravating factor which shall result in mitigation on the higher end of the range. If the merchandise involved in the breach is domestic status merchandise, that shall be considered a mitigating factor which shall result in mitigation on the lower end of the range.

3. If the breach resulted from negligence and a potential loss of revenue resulted (e.g., merchandise cannot be located in the zone, merchandise is removed from the zone without a permit), the claim shall be cancelled upon payment of an amount between one and three times the loss of revenue (loss of revenue to include duties, fees and taxes). If the merchandise involved in the breach is restricted merchandise, the claim shall be cancelled upon payment of an amount between three and five times the loss revenue but in no case less than 10 percent of the value of such merchandise.

4. If the breach is intentional (e.g., the foreign trade zone operator conspires to remove merchandise from the warehouse zone without proper entry being made), there will be no relief granted from liquidated damages.

5. Aggravating factors.

a. Principal's failure or refusal to cooperate with Customs.

b. Large number of violations compared to number of transactions handled.

c. Experience of principal.

d. Principal's carelessness or willful disregard toward its responsibilities.

6. Mitigating factors.

a. Contributory error by Customs.

b. Small number of violations compared to number of transactions handled.

c. Remedial action taken by principal.

d. Cooperation with Customs.

e. Lack of experience of principal.

f. Merchandise which cannot be located or which has been removed without permit is returned to Customs custody.

g. The merchandise involved in the breach is domestic status merchandise.

D. *Defaults not involving merchandise; modified CF 5955A.* Defaults not involving merchandise shall be processed in accordance with the following guidelines.

1. *Modified CF 5955A.* Notices of liquidated damages incurred may be issued on a modified CF 5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur. If the petitioner fails to demonstrate that the violation did not occur, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. *Maximum assessments.* In cases involving violations which do not involve merchandise which are assessed at $1,000 for each business day that the violation continues, a maximum of $10,000 shall be assessed for any one such continuing violation unless the district director can articulate a legitimate enforcement purpose for exceeding said limit. These claims shall be cancelled in conformance with the terms of these guidelines.

3. *Clerical error.* If the breach resulted from clerical error, the claim may be cancelled without payment.

4. *Negligence.* If the breach resulted from negligence, the claim may be cancelled upon payment of an amount between $100 and $250 per default actually assessed, depending on the presence of aggravating or mitigating factors. For example, if a document is filed 100 days late, Customs, by policy, will generally limit the assessment to $10,000. Mitigation will be based on the $10,000 actual assessment and not relate to the $100,000 potential assessment.

5. *Intentional breach.* If the breach was intentional, no relief shall be granted.

E. *Cancellation of claims for late payment of the annual fee.*

1. If the late payment resulted from clerical error or mistake, the claim may be cancelled upon payment of the amount due but not paid.

2. If the late payment resulted from negligence, cancel upon payment of the amount due but not paid plus the following percent of that amount for each day payment is in arrears:

a. First seven calendar days—not less than one-third of one percent nor more than three-fourths of one percent per day.

b. Second seven calendar days—not less than one and one-third percent nor more than one and three-fourths percent per day.

c. After the fourteenth calendar day—not less than two and one-third nor more than two and three-fourths percent per day.

3. If the late payment was intentional, no relief shall be granted.

X. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM THE FAILURE TO HOLD MERCHANDISE AT THE PLACE OF EXAMINATION (19 CFR 113.62(f))

A. *Failure to hold or transfer merchandise.* If the principal seeks and obtains permission from Customs to have merchandise examined at a place other than at a wharf or other place in the charge of a Customs officer and fails to hold merchandise at the place of examination or fails to transfer the merchandise to another place upon instruction from Customs obtained before the merchandise was released, the claim will be cancelled upon the following terms.

1. If either the bond principal or surety files an entry summary and pays estimated duties, taxes and fees on the merchandise, Customs may cancel the bond claim upon payment of an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited.

2. If neither the bond principal nor surety files an entry summary and pays estimated duties, taxes and fees on the merchandise, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties that would have been due plus an amount

between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited.

3. If the merchandise not delivered to or retained at the examination site is restricted or prohibited, and the bond principal or surety proves that an entry summary was filed, estimated duties, taxes and fees were paid and the merchandise was deemed admissible with that entry summary, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000.

4. If the merchandise not delivered to or retained at the examination site is restricted or prohibited, and the bond principal or surety does not prove that an entry summary was filed, estimated duties were paid or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties plus an amount between 15 and 25 percent of the value of the merchandise but not less than $250.

5. If the violation is determined to be intentional in nature, no relief should be afforded.

B. *Failure to keep customs seal or cording intact.* For a violation which involves the failure to keep any Customs seal or cording intact until the merchandise is examined, the claim shall be cancelled upon payment of an amount between $100 and $500 if there is no evidence to indicate the merchandise in the sealed or corded shipment was tampered with. If there is evidence of tampering, the claim shall be cancelled upon payment of an amount equal to the value of any missing merchandise.

XI. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM THE FAILURE OF A CENTRALIZED EXAMINATION STATION (CES) OPERATOR TO RETAIN MERCHANDISE AT THE CES (19 CFR PART 118, 19 CFR 113.63)

A. *Merchandise not delivered to or retained at a Centralized Examination Station (CES) by the CES operator.*

1. If an entry summary is filed on the merchandise and estimated duties, taxes and fees are paid, Customs may cancel the bond claim upon payment of an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited.

2. If an entry summary is not filed or estimated duties, taxes and fees are not paid on the merchandise, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties that would have been due plus an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited.

3. If the merchandise not delivered to or retained at the CES is restricted or prohibited, and the bond principal or surety proves that an entry summary was filed, estimated duties, taxes and fees were paid and the merchandise was deemed admissible with that entry summary, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000.

4. If the merchandise not delivered to or retained at the CES is restricted or prohibited, and the bond principal or surety does not prove that an entry summary was filed, estimated duties, taxes and fees were paid or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties, taxes and fees plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250.

5. If the violation is determined to be intentional in nature, no relief should be afforded.

B. *Failure to maintain records as required by regulation.*

1. If a Centralized Examination Station operator fails to maintain records as required by Customs, claims for liquidated damages not involving merchandise shall result.

2. If the breach resulted from clerical error, the claim may be cancelled without payment.

3. If the breach resulted from negligence, the claim may be cancelled upon payment of an amount between $100 and $250 per default, depending on the presence of aggravating or mitigating factors.

4. If the breach was intentional, no relief shall be granted.

5. Aggravating and mitigating factors shall be those enumerated in Section VII of these Standards.

XII. GUIDELINES FOR CANCELLATION OF CLAIMS WHEN PETITIONS FOR RELIEF ARE FILED UNTIMELY

A. Petitions may be accepted at the discretion of the district director at any time prior to commencement of any sanctioning action against a bond principal or the issuance of any notice to show cause against a surety.

B. If a petition is received untimely, Customs shall first consider the petition as though it had been filed timely and shall determine the amount of mitigation that would have been afforded in the case had the petition been filed timely. For purposes of these guidelines, this determination shall be known as the base amount.

C. Once the base amount has been determined, Customs shall calculate the number of calendar days that the petition is late and charge an additional mitigation amount of 0.1 percent (.001) per day. In no case shall the additional amount be less than $100.

D. If the bond principal fails to file a petition during the time period provided by regulation, but then files a petition during the period in which the surety, by regulation, could file a petition, that petition will be considered as a late petition. The number of days late shall be calculated from the end of the 60-day petitioning period afforded to the principal.

NOTE: For purposes of all bond cancellation standards (Sections I–XII), the term value shall mean value as determined under 19 U.S.C. 1401a.

[Published in the Federal Register, April 14, 1994 (59 FR 17830)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 5, 1994.

The following documents of the United States Customs Service, Office of Commercial Operations, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

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19 CFR Part 177

REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF SPICE RACK WITH GLASS JARS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), this notice advises interested parties that Customs is revoking a ruling letter concerning the tariff classification of a spice rack with glass jars. Notice of the proposed revocation was published March 2, 1994, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, Metals and Machinery Classification Branch, Office of Regulations and Rulings (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 2, 1994, Customs published a notice in the CUSTOMS BULLETIN, Volume 28, Number 9, proposing to revoke District Decision (DD)

841416, issued June 6, 1989, by the Buffalo District Director of Customs, which classified a spice rack with 12 glass jars with perforated lids and 24 different spice labels under subheading 7010.90.50 of the Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice. Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), this notice advises interested parties that Customs is revoking DD 841416 to reflect the proper classification of the product under subheading 7013.39.20, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes: [o]ther: [o]ther: [v]alued not over $3 each, with a corresponding duty rate of 30 percent *ad valorem*. HRL 955544 revoking DD 841416, is set forth in Attachment A to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: March 31, 1994.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., March 31, 1994.
CLA–2 CO:R:C:M 955544 MMC
Category: Classification
Tariff No. 7013.39.20

MS. MONA WEBSTER
TARGET STORES, IMPORT DEPARTMENT CC–10F
33 South Sixth Street
P.O. Box 1392
Minneapolis, Minnesota 55440–1392

Re: Glass spice jars and rack; DD 841416 revoked; EN 70.13; HRL 087727.

DEAR MR. WEBSTER:

This is in reference to DD 841416, dated June 6, 1989, in which you were advised by the District Director of Customs, Buffalo, NY, of the classification of glass spice jars and holding rack under the Harmonized Tariff Schedule of the United States (HTSUS). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed revocation of DD 841416 was published March 2, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 9.

Facts:

The article subject to DD 841416 was a 2-tiered 12½" long spice rack which held 12 corresponding clear glass 118 milliliter jars. The racks were made of wood and plastic covered

wire mesh. The jars had plastic perforated screw-on lids and 24 different spice labels. DD 841416 classified the rack and jars in subheading 7010.90.50, HTSUS, which provides for glass containers of the kinds commonly used commercially for the conveyance or packing of liquid or solid products.

Issue:

Are the subject spice jars and rack classifiable as containers used for the commercial conveyance of liquid or solid products under the HTSUS?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1, HTSUS, states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Headquarters Ruling Letter (HRL) 087727, dated September 21, 1990, concerned the classification of a spice rack consisting of 12 glass bottles with caps, set in a wire and wood rack. it held that the essential character of the spice rack and glass jars was the glass jars because the rack was used simply to hold the jars while the jars themselves stored and dispensed spices.

Once it was determined that the glass jars imparted the essential character to the imported article, the proper heading in Chapter 70, HTSUS, for glass, had to be determined. Two possible headings were considered. Heading 7010, HTSUS, which provides, in pertinent part, for glass containers of the kind commonly used commercially for the conveyance or packing of liquid or solid products, and heading 7013, HTSUS, which provides for glass used for table/kitchen or similar purposes.

According to HRL 087727, heading 7010, HTSUS, only applies to food and beverages jars used to convey or market solid or liquid food products to consumers. Additionally, jars of this heading are usually discarded after their contents are consumed. After applying the above mentioned criteria to the spice jars in question, HRL 087727 held that the jars are not usually discarded after a particular spice is used. Instead, this type of jar is reused to store and dispense additional portions of its original spice.

This determination is consistent with the Explanatory Notes to heading 7013, HTSUS. In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be consulted. The Explanatory Notes (EN), although not dispositive, are to be used to determine the proper interpretation of the HTSUS. See, T.D. 89–80, 54 Fed. Reg. 35127, 35128, (August 23, 1989). EN 70.13, pg. 936, lists salt cellars as exemplars for heading 7013, HTSUS, and HRL 087727 determined that spice jars are similar to them.

Therefore, HRL 087727 found that the spice jars in the spice rack were classifiable in heading 7013, specifically subheading 7013.39.20, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration, or similar purposes: [o]ther: [o]ther: [v]alued not over $3 each, with a corresponding duty rate of 30 percent *ad valorem*.

The reasoning and conclusions of HRL 087727 continued to apply to spice jars imported in a spice rack. Therefore, the spice rack with jars which was the subject of DD 841416 is classifiable in subheading 7013.39.20, HTSUS.

Holding:

The subject spice rack with jars is classifiable in subheading 7013.39.20, HTSUS. The general column one rate of duty is 30 percent *ad valorem*.

DD 841416, dated June 6, 1989, is hereby revoked. In accordance with section 625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF FISHING LINE

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, (1993), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a nylon monofilament fishing line.

DATE: Comments must be received on or before May 20, 1994.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, office of Regulations and Rulings, Attention: Textile Classification Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Nancy Plumer, Textile Classification Branch, (202–482–7050).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, (1993), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a nylon monofilament fishing line.

In New York Ruling Letter (NYRL) 884900, issued on April 9, 1993, by the Area Director of Customs, New York Seaport, nylon monofilament fishing line was classified in subheading 5404.10.8020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "[s]ynthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; * * *: [m]onofilament: [o]ther: [o]ther: [o]ther: [o]f nylon or other polyamides." The rate of duty is 7.8% *ad valorem*. The ruling letter is set forth in Attachment A to this document.

Customs Headquarters is of the opinion that our interpretation of what articles are considered "made up" into fishing line for purposes of classification in heading 9507, HTSUS, is somewhat limiting. Therefore, in distinguishing between what qualifies as fishing line for heading 9507, HTSUS, and Section XI, HTSUS, classification purposes, we add these classifications. If fishing line is cut to length, imported on a spool,

is packaged in a box or blister pack and is labelled in a way to clearly identify it as fishing line, then it would be considered "cut to length" and "made up" into fishing line and it would be classifiable in heading 9507, HTSUS. Specifically, it would be classifiable in subheading 9507.90.2000, HTSUS, which provides for "[f]ishing rods, fish hooks and other line fishing tackle * * * parts and accessories thereof: [o]ther: [f]ishing line put up and packaged for retail sale." The rate of duty is 5.4% *ad valorem*.

As the fishing line at issue in NYRL 884900 fits the above description, Customs intends to revoke this letter to reflect the proper classification of the fishing line in subheading 9507.90.2000, HTSUS. Before taking this action, consideration will be given to any written comments timely received. The proposed ruling revoking New York RUling Letter 884900 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 29, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, N.Y.

CLUE–2–54:S:N:N6:361 884900
Category: Classification
Tariff No. 5404.10.8020

MR. MENDEL M. JAROSLAWICZ
C/O GLOBE SHIPPING CO., INC.
Hemisphere Center, U.S. 1 & 9 Int'l Way
Newark, NJ 07114

Re: The tariff classification of nylon monofilament fishing line from Brazil.

DEAR MR. JAROSLAWICZ:

In your letter dated March 31, 1993, on behalf of Meg Tackle Imports Inc., you requested a tariff classification ruling.

You have submitted eight samples of 100% nylon monofilament fishing line, as follows: four samples which are labeled "J.T." brand and measure 8, 10, 15, and 25 lb. test; and four samples which are labeled "Eagle Claw" brand and measure 4, 6, 8, and 30 lb. test. We can not rule on all of the stock numbers and test weights indicated in your letter without receiving samples of each item. The monofilaments measure approximately 0.64 millimeters (mm) in maximum cross-sectional dimension (for the 30 lb. test) or less, and we assume that all of the monofilaments measure 87 decitex or more. The eight fishing line samples are put up for retail sale, either on blister packed plastic spools or on plastic spools packed in boxes; the spools contain between 325 and 1500 yards of fishing line.

The applicable subheading for the monofilament fishing lines will be 5404.10.8020, Harmonized Tariff Schedule of the United States (HTS), which provides for synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm, * * *, monofilament, other, other, other, of nylon or other polyamides. The rate of duty will be 7.8 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this rulings should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:T 956007 NLP
Category: Classification
Tariff No. 9507.90.2000

MR. MENDEL H. JAROSLAWICZ
C/O GLOBE SHIPPING CO., INC.
Hemisphere Center, U.S. 1 & 9 Int'l Way
Newark, NJ 07114

Re: Revocation of NYRL 884900; fishing line; headings 5404 and 9507; HRL 954309.

DEAR MR. JAROSLAWICZ:

On April 9, 1993, Customs issued to you New York Ruling Letter (NYRL) 884900, which classified eight samples of nylon monofilament fishing line in subheading 5404.10.8020, Harmonized Tariff Schedule of the United States (HTSUS). Upon review, we are of the opinion that the classification of this product was incorrect and this ruling modifies that classification.

Facts:

Eight samples of 100% nylon monofilament fishing line were submitted. Four samples were labeled "J.T." brand and measure 8, 10, 15 and 25 lb. test. Four samples were labeled "Eagle Claw" brand and measure 4, 6, 8, and 30 lb. test. The monofilaments measure approximately 0.64 mm in maximum cross-sectional dimension (for the 30 lb. test) or less, and all of the monofilaments measure 67 decitex or more. The samples were put up for retail sale, either on blister packed plastic spools or on plastic spools packed in boxes. In addition, the spools contained between 325 and 1500 yards of fishing line.

NYRL 884900 classified the fishing line in subheading 5404.10.8020, HTSUS, which provides for "[s]ynthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; * * *: [m]onofilament: [o]ther: [o]ther: [o]ther: [o]f nylon or other polyamides." The rate of duty is 7.8% *ad valorem*.

Issue:

What is the tariff classification of the above described fishing line under the HTSUS?

Law and Analysis:

In Headquarters Ruling Letter (HRL) 954709, dated March 2, 1994, we dealt with the classification of nylon monofilament fishing line that was cut to length for retail sale. All of the line was put up on a plastic spool and enclosed in clear plastic retail packages. These packages were then enclosed in boxes and the articles were clearly identified as fishing line. The monofilaments all measured 0.17 millimeters in diameter and measured 67 decitex or more. In determining that this fishing line was classifiable in heading 9507, HTSUS, we stated the following:

> Therefore, in distinguishing between what qualifies as fishing line for heading 9507, HTSUS and Section XI, HTSUS, classification purposes, we add these further

clarifications. If the line is only imported on a spool, as the line in HRL 084898 appeared to be, then it is our position that regardless of whether it is cut to length, this line cannot be considered to be "otherwise made up into fishing line." Spools, in and of themselves, are a common method transporting yarns, etc. Also, fishing line would normally be otherwise indistinguishable from other yarns. Furthermore, mere spooling without other evidence of retail sale would make distinctions between a fishing line and other monofilaments impossible. However, if the line is cut to length, imported on a spool, is packaged in a box or blister pack and is labelled in a way to clearly identify it as fishing line, then we believe that this line would be considered to be "cut to length" and "made up" into fishing line.

The fishing line at issue here appears to be cut to length, wound on a spool, enclosed in either a blister pack or package and is clearly identified as fishing line. Therefore, in accordance with HRL 954309, it would be classifiable in subheading 9507.90.2000, HTSUS, which provides for "[f]ishing rods, fish hooks and other line fishing tackle * * * parts and accessories thereof: [o]ther: [f]ishing line put up and packaged for retail sale."

Holding:

NYRL 884900 is revoked.

The fishing line is classifiable in subheading 9507.90.2000, HTSUS, which provides for "[f]ishing rods, fish hooks and other line fishing tackle * * * parts and accessories thereof: [o]ther: [f]ishing line put up and packaged for retail sale." The rate of duty is 5.4% *ad valorem*.

In order to ensure uniformity in Customs classification of this merchandise and eliminate uncertainty, pursuant to section 177.9(d)(1), Customs Regulations (19 CFR 177.9(d)(1)), NYRL 884900 is revoked effective with the date of this letter. For purposes of future transactions in merchandise of this type, NYRL 884900 will not be valid precedent.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF STADIUM SEAT CUSHION

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a stadium seat cushion.

DATE: Comments must be received on or before May 20, 1994.

ADDRESS: Written Comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, NW., (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Craig Clark, Textile Classification Branch, (202) 482–7050.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1) of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a stadium seat cushion.

In Headquarters Ruling Letter (HRL) 088100, issued by Customs headquarters on February 8, 1991, a stadium seat cushion was classified in Heading 6304 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other furnishing articles, excluding those of Heading 9404 (see ruling letter at "Attachment A" to this document).

After further analysis of HRL 088100, we believe that the classification of the stadium seat cushion was erroneous. In that ruling we found that the merchandise was not classifiable in Heading 9404 because it could not be considered an article of bedding or similar furnishing. Cushions are among the articles listed in Heading 9404, HTSUSA. In addition, we classified a stadium seat cushion in heading 9404, HTSUSA, in HRL 954864, dated October 20, 1993 (see "Attachment B"). Consequently, the stadium seat cushion is classifiable in subheading 9404.90.2000, HTSUSA, which provides for articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered, other, pillows, cushions and similar furnishings, other.

Customs intends to revoke HRL 088100 to reflect proper classification of the product in subheading 9404.90.2000, HTSUSA. Before taking this action, consideration will be given to any written comments timely received. The proposed ruling revoking the prior headquarters ruling is set forth in "Attachment C" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: March 31, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., February 8, 1991.

CLA–2 CO:R:C:G 088100 JS
Category: Classification
Tariff No. 6304.93.0000

MARIE A RISPOLI
ARJON MFG. CORPORATION
100 Hoffman Place
Hillside, New Jersey 07205

Re: Stadium seat cushion.

DEAR MS. RISPOLI:

This is in reference to your letter of October 10, 1990, requesting classification of a stadium seat cushion under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Facts:

The sample at issue is a rectangular cushion measuring approximately 12 × 12 × 1 inches. it is made up of a piece of foam covered with a light-weight fabric which your letter identifies as rayon. However, our informal testing has indicated that the fabric is probably made of the synthetic man-made fiber known as nylon.

Issue:

What is the appropriate classification of a stadium seat cushion under the HTSUSA.

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 provides that classification shall be determination according to the terms of the headings and any relevant chapter or section notes.

Heading 6304, HTSUSA, provides for other furnishing articles, excluding those of heading 9404 (articles of bedding). Although heading 9404 includes cushions that are stuffed or internally fitted with any material, such cushions must be of the type considered articles of bedding and similar furnishings. The sample at issue is relatively small, plain, lightweight and somewhat moisture resistant, which makes it ideal for use out of doors, and at sporting events where only hard seating is available. Articles of bedding, on the other hand, are intended primarily for use on a bed and are made of finer fabrics which are often decorated in some manner.

In addition, the Explanatory Notes, used as an aid in the interpretation of the tariff at the international level, state that heading 6304 covers furnishing articles of textile materials, other than those of the preceding headings or of heading 94.04, for use in the home, pubic buildings, theatres, churches, etc. The stadium seat cushion is designed for use in a public building, or sports stadium, and as such is properly considered an other furnishing article of heading 6304.

Holding:

The merchandise at issue is classified under subheading 6304.93.0000, HTSUSA, which provides for other furnishing articles, excluding those of heading 9404: other: not knitted or crocheted, of synthetic fibers, textile category 666, and dutiable at the rate of 10.6 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. if so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest you check, close the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact its local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Operations Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., October 20, 1993.

CLA–2 CO:R:C:T 954864 HP
Category: Classification
Tariff No. 9404.90.2000

MS. TERESA A. OTRUBA
BAKER & MCKENZIE
815 Connecticut Avenue, N.W.
Washington, D.C. 20006–4078

Re: Stadium seat cushion with heat-retaining chemical pouch is similar to an article of bedding.

DEAR MS. OTRUBA:

This is in reply to your letter of August 18, 1993. That letter concerned the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a stadium seat cushion, produced in an unspecified country. Please reference your client R.G. Barry Corporation.

Facts:

The merchandise at issue consists of the "Heat and Go," a stadium seat cushion designed with a heat-retaining bladder. The entire cushion is heated in a microwave oven, and the bladder/pouch will retain heat for several hours. The cushion is composed of plastic foam, a textile cover and a 11″ × 14″ plastic pouch containing water, a wax-type substance, and a heating chemical. The pouch is inserted into a slit in a 1½″ thick 13″ × 18″ piece of polyurethane foam, encased in a woven nylon shell. The shell has two handles at opposite ends, and a strap with hook and loop fasteners. The cushion may be folded in half for carrying.

We note that the port of Laredo, Texas, has received an importation of this merchandise under Entry Summary No. R42–00004391. The cushion was entered under subheading 6307.90, HTSUSA, as an other made up article of textiles. The entry remained unliquidated as of September 21, 1993, and should be liquidated in accordance with the results of this letter.

Issue:

Whether the stadium seat cushion is classifiable under the HTSUSA as pillows, cushions and similar furnishings?

Law and Analysis:

Heading 9404, HTSUSA, provides for, *inter alia*, articles of bedding and similar furnishings, internally fitted with any material. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System (Harmonized System) constitute the official interpretation of the scope and content of the tariff at the international level. They represent the considered views of classification experts of the Harmonized System Committee. *Totes, Inc. v. United States*, No. 91–09–00714, Slip Op. 92–153, 14 Int'l Trade Rep. (BNA) 1916, 1992 Ct. Intl. Trade LEXIS 158 (Ct. Int'l Trade 1992). While not treated as dispositive, the EN are to be given considerable weight in Customs' interpretation of the HTSUSA. *Boast, Inc. v. United States*, No. 91–11–00793, Slip Op. 93–20, 1993 Ct. Intl.

Trade LEXIS 19 (Ct. Int'l Trade 1993). It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the Explanatory Notes when interpreting the HTSUSA.

The EN to this heading states that "articles remain classified in this heading whether or not they incorporate electric heating elements." It is our opinion that no sound reason exists to differentiate seat cushions with electric heating elements from seat cushions with electrically (via microwave) heatable elements. Accordingly, we agree with your arguments that the Heat and Go is classifiable within heading 9404, HTSUSA.

Holding:

As a result of the foregoing, the instant merchandise is classified under subheading 9404.90.2000, HTSUSA, as articles of bedding and similar furnishings, internally fitted with any material, other that of cotton. The applicable rate of duty is 6 percent *ad valorem*.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN DURANT,
Director,
Commercial Operations Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:T 955664 CC 088100
Category: Classification
Tariff No. 9404.90.2000

MARIE A RISPOLI
ARJON MFG. CORPORATION
100 Hoffman Place
Hillside, New Jersey 07205

Re: Revocation of HRL 088100; classification of a stadium seat cushion; classifiable in heading 9404.

DEAR MS. RISPOLI:

In Headquarters Ruling Letter (HRL) 088100, dated February 8, 1991, we issued a ruling to you, classifying a stadium seat cushion in Heading 6304 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have had the occasion to review this ruling and find that it is in error.

Facts:

The merchandise at issue is a rectangular cushion measuring approximately 12 inches by 12 inches by 1 inch. It is made up of a piece of foam covered with a light-weight fabric which your letter identifies as rayon. However, our informal testing indicated that the fabric is probably made of the synthetic man-made fiber known as nylon.

Issue:

Whether the stadium seat cushion is classifiable in Heading 6304, HTSUSA, or in Heading 9404, HTSUSA?

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Heading 6304, HTSUSA, provides for other furnishing articles, excluding those of Heading 9404. According to the *Harmonized Commodity Description and Coding System,*

Explanatory Notes, the official interpretation of the HTSUSA at the international level, at page 865, Heading 6304 covers furnishing articles of textile materials, other than those of Heading 9404. These articles include wall hangings and textile furnishings for ceremonies (e.g., weddings or funerals); mosquito nets; cushion covers, loose covers for furniture, antimacassars; table; cushion covers; loose covers for furniture, antimacassars; table covers (other than those having the characteristics of floor coverings—see Note 1 to Chapter 57); mantelpiece runners; curtain loops; valances (other than those of Heading 6303).

Heading 9404, HTSUSA, provides for articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillow) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered. The *Explanatory Notes* to Heading 9404 state at page 1580 that this heading covers:

> (B) **Articles of bedding and similar furnishings** which are sprung or stuffed or internally fitted with any material * * *. For example:
>
> * * * * * * *
>
> (2) Quilts and bedspreads (including counterpanes, and also quilts for baby-carriages), eiderdowns and duvets (whether of down or any other filling), mattress-protectors (a kind of thin mattress placed between the mattress itself and the mattress support), bolsters, pillows, **cushions** (emphasis added), pouffes, etc.

In HRL 088100 we found that the stadium seat cushion was not classifiable in Heading 9404 because it could not be considered articles of bedding and similar furnishings. This finding is incorrect for the following reasons. First, cushions are among the articles listed in Heading 9404. Second, we note that the merchandise at issue is internally fitted with material. Third, the *Explanatory Notes* specifically list cushions as a kind of article classifiable as an article of bedding or similar furnishing in Heading 9404; the *Explanatory Notes* do not list cushions as being classifiable in Heading 6304. Fourth, in HRL 954864, dated October 20, 1993, we classified a stadium seat cushion in Heading 9404. Consequently, the merchandise at issue is classifiable in Heading 9404.

Holding:

The merchandise at issue is classified under subheading 9404.90.2000, HTSUSA, which provides for articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered, other, pillows, cushions and similar furnishings, other. The rate of duty is 6 percent ad valorem. No textile category is currently assigned to merchandise classified under this subheading.

Accordingly, HRL 088100, dated February 8, 1991, is hereby revoked.

JOHN DURANT,
Director,
Commercial Operations Division.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 94–51)

TORRINGTON CO., PLAINTIFF, AND FEDERAL-MOGUL CORP., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF FRANCE, S.A., AEROSPATIALE DIVISION HELICOPTERES, AND AEROSPATIALE HELICOPTER CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00562

(Dated March 30, 1994)

JUDGMENT

TSOUCALAS, *Judge:* This Court, having received and reviewed the Department of Commerce, International Trade Administration's Final Results of Redetermination Pursuant to Court Remand, *The Torrington Co. v. United States* Slip Op. 93–171 (August 26, 1993) ("Remand Results"), and any responses to the Remand Results submitted by the parties, including those of SKF USA Inc. and SKF France, S.A., which this Court finds to without merit, it is hereby

ORDERED that the Remand Results filed by the Department of Commerce, International Trade Administration, are affirmed, and it is further

ORDERED that since all other issues have been decided, this case is dismissed.

(Slip Op. 94–52)

GENERAL ELECTRIC CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND TORRINGTON CO., AND FEDERAL-MOGUL CORP., DEFENDANT-INTERVENORS

Court No. 91–08–00588

(Dated March 30, 1994)

JUDGMENT

TSOUCALAS, *Judge:* This Court, having received and reviewed the Department of Commerce, International Trade Administration's Final

Results of Redetermination Pursuant to Court Remand, *General Electric Company v. United States* Slip Op. 93–55 (April 21, 1993) ("Remand Results") wherein antidumping duties were recalculated after excluding from the calculation of the assessment rate eight sales identified as occurring prior to the period of review, it is hereby

ORDERED that the Remand Results filed by the Department of Commerce, International Trade Administration are affirmed, and it is further

ORDERED that since all other issues have been decided, this case is dismissed.

(Slip Op. 94–53)

AVESTA SHEFFIELD, INC., BRISTOL METALS, INC., DAMASCUS TUBE DIVISION, DAMASCUS-BISHOP TUBE CO., TRENT TUBE DIVISION OF CRUCIBLE MATERIALS CORP., AND THE UNITED STEELWORKERS OF AMERICA (AFL-CIO/CLC), PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND SAMMI METAL PRODUCTS CO., LTD., AND PUSAN STEEL PIPE CO., LTD., DEFENDANT-INTERVENORS

Court No. 93–01–00062

[Commerce determination remanded.]

(Dated March 31, 1994)

Collier, Shannon, Rill & Scott (David A. Hartquist, Jeffrey S. Beckington and *Kathleen W. Cannon)* for plaintiffs.

Frank W. Hunger, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Cynthia B. Schultz), Michelle K. Behaylo,* Attorney Advisor, office of the Chief Counsel for Import Administration, United States Department of Commerce, of counsel, for defendant.

Morrison & Foerster (Donald B. Cameron, G. Brian Busey and *Craig A. Lewis)* for defendant-intervenors.

OPINION

RESTANI, *Judge:* This challenge to a United States Department of Commerce ("Commerce") antidumping duty determination is before the court following remand to recalculate foreign market value ("FMV") with no circumstance of sale adjustment for value-added taxes ("VAT"). *See Avesta Sheffield, Inc. v. United States,* Slip Op. 93–217, at 13–14 (Nov. 18, 1993) *("Avesta I").* Furthermore, in a previous order the court approved Commerce's determination to adjust United States Price ("USP"), pursuant to 19 U.S.C. § 1677a(d)(1)(C) (1988), by applying the foreign market VAT rate to the price of the merchandise sold for the United States market. At this point in the proceedings, this methodology is not at issue. Apparently, Commerce made additional adjustments with which plaintiffs take issue.

First, Commerce and plaintiffs have now agreed that a VAT adjustment should not be made to USP when the FMV being compared is based on constructed value. As no objection was raised, the court directs Commerce to correct this error on remand.

Second, plaintiffs allege that Commerce incorrectly calculated the USP base to which it applies the VAT rate. Plaintiffs assert that, in essence, duty drawback is added to the base, thereby increasing USP by the VAT on the duty drawback amount. Plaintiffs argue that duty drawback is not a real cost or price factor and should not be included in USP before the VAT rate is applied to achieve the adjustment.

Commerce argues that its methodology avoids creation of fictitious margins. That is, under plaintiffs' methodology products sold at truly comparable prices might be assigned a margin equal to the VAT on the duty drawback amount. Commerce asserts that FMV presumably includes duties paid on imported inputs and VAT on FMV therefore includes VAT on whatever duties are passed along. To achieve comparability, commerce argues, the VAT adjustment to USP should be calculated on the duty drawback added, even though it is only loosely related to the duties included in FMV. *See Avesta I,* at 6.

Plaintiffs have not presented the court with any argument that this methodology violates the language of 19 U.S.C. § 1677a(d)(1)(C), or any other potentially applicable statutory provision. Accordingly, the adjustment would appear to be within Commerce's discretion.

Remand results are returnable within thirty days.

(Slip Op. 94–54)

VAN DALE INDUSTRIES, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91–03–00178

[Plaintiff's motion for summary judgment challenging Customs' classification of the subject merchandise under heading 6109, HTSUS denied. Judgment for Defendant.]

(Decided April 1, 1994)

Grunfeld, Desiderio, Lebowitz & Silverman (Steven P. Florsheim) for Plaintiff.

Frank W. Hunger, Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, *(Susan Burnett Mansfield),* Commercial Litigation Branch, Civil Division, United States Department of Justice, for Defendant.

OPINION

DICARLO, *Chief Judge:* Plaintiff, Van Dale Industries, is the importer of record for the subject merchandise—women's or girls' underwear tops that cover the chest area and do not extend past the midriff of the wearer. The United States Customs Service classified the merchandise under Subheading 6109.10.00, Harmonized Tariff Schedule of the

United States (HTSUS), which applies to "T-shirts, singlets, tank tops and similar garments" at a rate of 21% ad valorem. Plaintiff timely filed a protest against the liquidation of the merchandise. Upon denial of the protest, Plaintiff timely brought this action.

Plaintiff claims that Customs' classification is in error, and that the merchandise is properly classifiable under Subheading 6108.91.00, HTSUS, which applies to "women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles" at a rate of 9% ad valorem. In the alternative, Plaintiff claims that the merchandise is properly classifiable under Subheading 6212.90.00, HTSUS, which applies to "brassieres, girdles, corsets, braces, suspenders, garters and similar articles" at a rate of 7% ad valorem.

Both parties move for summary judgment. For the reasons that follow, the court grants Defendant's motion and affirms Customs' classification.

DISCUSSION

A. *Standard of Review:*

The court shall grant summary judgment when it determines that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. USCIT R. 56(d). A fact is material only if it "might affect the outcome of the suit." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In order to determine the materiality of a fact, the court must apply the substantive law to identify which facts are critical and which are irrelevant. *Id.*

A Customs classification is presumed to be correct and the burden of proving otherwise rests upon plaintiff. *See* 28 U.S.C. § 2639(a)(1) (1988). To determine whether plaintiff has overcome this burden, the court must consider "whether the government's classification is correct, both independently and in comparison with the importer's alternative." *Jarvis Clark Co. v. United States*, 2 Fed. Cir. (T) 70, 75, 733 F.2d 873, 878 (1984), *reh'g denied*, 2 Fed. Cir. (T) 97, 739 F.2d 628 (1984).

B. *Construction of Statutory Provisions:*

The pertinent provisions of the Harmonized Tariff Schedule of the United States are as follows:

Heading/ subheading	*Article Description*	*Rates of duty*
6108	Women's or girls' slips, petticoats, briefs, panties, night dresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted	
* * * * * * *		
	Other:	
6108.91.00	Of cotton	9%
* * * * * * *		
6109	T-shirts, singlets, tank tops and similar garments, knitted or crocheted:	

Heading/ subheading		*Article Description*	*Rates of duty*
6109.10.00		Of cotton	21%
*	*	*	*
		Women's or girls':	
	37	Underwear	
		Other:	
		T-shirts:	
	40	Women's	
	45	Girls'	
		Tank tops:	
	60	Women's	
	65	Girls'	
	70	Other	
*	*	*	*
6212		Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted:	
*	*	*	*
6212.90.00		Other	7%

Customs classified the merchandise as women's or girls' underwear under 6109.10.0037, HTSUS. The merchandise is not among the exemplars specified in headings 6108, 6109, or 6212. The question before the court is whether Customs is correct in classifying the merchandise as "similar garments" under Heading 6109.

In interpreting the United States tariff provisions, the objective of the court is to determine and give effect to the intent of Congress. *See Sandoz Chem. Works, Inc. v. United States*, 43 CCPA 152, 156, C.A.D. 623 (1956). The starting point of this inquiry is the language of the statute. Where it is unclear whether merchandise falls within the language of the statute, the court may resort to legislative history and to rules of statutory construction. *United States v. Damrak Trading Co., Inc.*, 43 CCPA 77, 79, C.A.D. 611 (1956). The court has not found, nor have the parties referred to, any legislative history of the statutory provisions in question.

One rule of statutory construction is *ejusdem generis*, which means "of the same kind, class, or nature." *Black's Law Dictionary* 464 (5th ed. 1979). This rule applies "whenever a doubt arises as to whether a given article not specifically named in the statute is to be placed in a class of which some of the individual subjects are named." *Damrak*, 43 CCPA at 79. Under *ejusdem generis*, where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described. *Id.* In other words, *ejusdem generis* requires that merchandise possess the particular characteristics or purposes that unite the specified exemplars in order to be classified under the general terms. *See Nissho-Iwai Am. Corp. v. United States*, 10 CIT 154, 157, 641 F. Supp. 808, 810 (1986) (citations omitted).

C. *Whether Customs' Classification is Erroneous:*

Customs classified the merchandise as women's or girls' underwear under Heading 6109, which provides for "T-shirts, singlets, tank tops and similar garments." The merchandise is women's or girls' underwear tops that cover the chest area, do not extend past the midriff of the wearer, have a ribbed bottom and do not provide any shape or support to the breasts. Plaintiff claims that heading 6109 garments possess two essential characteristics: they all extend to the waist and they are all appropriate as outerwear. Since the merchandise neither extends to the waist nor is appropriate as outerwear, Plaintiff argues, it is not classifiable under Heading 6109.

In support of its argument that all Heading 6109 garments must extend to the waist, Plaintiff cites the "Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories" issued by U.S. Customs Service, Customs Information Exchange, CIE 13/88 (Nov. 23, 1988),[1] which state that for T-shirts, "[a] ribbed waistband, a drawstring, or other tightening at the waist is not allowed;" and for tank tops, "[b]ottom hems may be straight or curved, side-vented, or of any other type normally found on a blouse or shirt, including blouson or drawstring waists or an elastic bottom." Pl.'s Br. at 6–7 (quoting the Guidelines, at 12–13). The mere mentioning of "waist" in these Guidelines passages, however, does not lead to the conclusion that T-shirts and tank tops must all extend to the waist. And Plaintiff cites no Guidelines language suggesting that the third exemplar under Heading 6109—singlets—should reach the waist.

Plaintiff also claims that T-shirts, singlets and tank tops must extend to the waist because they are all "shirts" and a "shirt" is "[a] garment for the upper part of the body * * * usu[ally] having * * * a tail long enough to be tucked inside trousers or a skirt." Pl.'s Br. at 8 (quoting definition of shirt in *Merriam-Webster's Collegiate Dictionary* 1082 (10th ed. 1993)). Plaintiff provides no authority for the proposition that T-shirts, singlets and tank tops are all shirts. According to the dictionary definitions cited by Plaintiff, "T-shirt" and "singlet" are both "undershirts." *Id.* ("T-shirt" is "[a] collarless short-sleeved or sleeveless usu. cotton *undershirt;* also, an outershirt of similar design." *Id.* at 1270. "Singlet" is "[a]n athletic jersey; *undershirt." Id.* at 1095) (emphasis added). Undershirts, however, are not necessarily shirts and need not possess all of the characteristics of a shirt. *See Mast Indus., Inc. v. United States,* 9 CIT 549, 553 (1985), *aff'd,* 4 Fed. Cir. (T) 79, 786 F.2d 1144 (1986) (The court found "no decision which interprets the common and commercial meaning of 'shirt' under the tariff schedules to include all forms of shirts. To the contrary, [it was] held that an 'undershirt' was not a 'shirt' within paragraph 919 of the Tariff Act of 1930.") (citing *Yamatoya Co. v. United States,* Abs. 31687, 68 Treas. Dec. 982 (1935) ("'shirt' under-

[1]The Guidelines function as an interpretative aid to Customs employees in classifying merchandise. Though helpful as an aid, the Guidelines are not legally binding. *See* United States Customs Service, Headquarters Ruling Letter 954827 (Dec. 8, 1993), *available in,* LEXIS, Itrade Library, Allcus File.

stood to mean an 'outer garment * * * as distinguished from an undershirt, nightshirt, etc.'")). Accordingly, the court does not find reaching the waist is an essential characteristic of the Heading 6109 exemplars.

In addition, Plaintiff's argument that all Heading 6109 garments must be appropriate for outerwear is without merit. Plaintiff's argument overlooks the provision of Subheading 6109.10.00, HTSUS, which divides women's or girls' garments into two categories: "Underwear" (6109.10.0037) and "Other," with a further division of the latter into "T-shirts" (6109.10.0040 and 0045), "tank tops" (6109.10.0060 and 0065) and "other" (6109.10.0070). While T-shirts and tank tops may be suitable as outerwear, the court sees no reason why garments classified under the category specifically designated by the statute as "Underwear" must be suitable as outerwear.

Plaintiff further contends that the Explanatory Note to Heading 6109 expressly excludes the merchandise from that heading. The Explanatory Note provides that T-shirts are "of the vest type" and are "never made with a ribbed waistband, drawstring or other means of tightening." 2 Customs Cooperation Council, *Explanatory Notes to the Harmonized Commodity Description and Codina System* 839 (1st ed. 1986).[2] Plaintiff claims that since the merchandise has a ribbed bottom, it is excluded from Heading 6109. Plaintiff ignores, however, that the exclusionary language of the Explanatory Note applies to T-shirts only. The Explanatory Notes do not indicate that the other two exemplars under Heading 6109—singlets and tank tops—should be subject to the same restriction. Thus, it cannot be concluded that the Explanatory Notes exclude all garments with a means of tightening from Heading 6109.

D. *Whether the Merchandise is Classifiable Under Heading 6108:*

Plaintiff claims that the merchandise is properly classifiable under Heading 6108, HTSUS, which applies to "women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles." According to Plaintiff, the exemplars are united by the fact that they are women's or girls' underwear garments. Plaintiff argues that underwear tops are similar to slips in that they are both underwear covering the upper body.

Plaintiff's argument is not persuasive. As previously discussed, women's and girls' underwear is also provided for under Heading 6109. Plaintiff does not explain why underwear tops are more similar to slips than to singlets, an exemplar under Heading 6109. According to the Explanatory Notes, Heading 6109 applies to "T-shirts, singlets and other vests." *Explanatory Notes,* at 839. It appears that underwear tops are similar to T-shirts, singlets and other vests in that they are all undershirts. *See Merriam-Webster's Collegiate Dictionary, supra* (definitions of "T-shirt" and "singlet"); and *Webster's Third New International Dic-*

[2]The Explanatory Notes constitute the official interpretation of the Harmonized System by the Customs Cooperation Council, the international organization responsible for the Harmonized System. Although not legally binding on the United States, they are generally indicative of the proper interpretation of the provisions of HTSUS. *Lynteq, Inc. v. United States,* ___ Fed. Cir. (T) ___, ___, 976 F.2d 693, 699 (1992) (citing H.R. Conf. Rep. No. 100-576, 100th Cong., 2d Sess. 549 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1582).

tionary 2547 (1986) (defining "vest" as "a knitted sleeved or sleeveless undershirt for women or sometimes children"). An "undershirt" is "a collarless undergarment with or without sleeves." *Id.* at 2490. Underwear tops are collarless undergarments without sleeves. Plaintiff has offered no persuasive reasoning why the merchandise cannot be considered as an undershirt and, as such, be properly classified under Heading 6109.

E. *Whether the Merchandise is Classifiable Under Headings 6212:*

Plaintiff argues, in the alternative, that the merchandise is properly classifiable under Heading 6212, HTSUS, as "brassieres, girdles, corsets, braces, suspenders, garters and similar articles." The Explanatory Note to Heading 6212 provides: "This heading covers articles of a kind designed for wear as body-*supporting* garments or as *supports* for certain other articles of apparel, and parts thereof." *Explanatory Notes*, at 857 (emphasis added). Each of the exemplars under Heading 6212 provides support to the body or to certain other articles of apparel: brassieres support the breasts; girdles and corsets support the stomach; and braces, suspenders, and garters support articles of apparel *(e.g.,* skirts, pants, and stockings). Thus, the essential characteristic of Heading 6212 articles is that they are garments that provide support.

Plaintiff admits the merchandise does not provide support to the breasts or to any other body part or article of apparel. Plaintiff argues, however, that brassiere-like and girdle-like articles that provide little or no support are not excluded from Heading 6212. Plaintiff provides no authority for this proposition. Consistent with the Explanatory Notes, garments that provide little support would be properly classifiable under Heading 6212, whereas garments that provide no support at all would be classified elsewhere. Since the merchandise does not provide any support, the court finds it is not properly classifiable under Heading 6212.

CONCLUSION

For reasons stated above, the court finds that Plaintiff has not met its burden to overcome the presumption of correctness of Customs' classification. Accordingly, Plaintiff's motion for summary judgment is denied. The court grants Defendant's motion for summary judgment and affirms Customs' classification of the merchandise.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C94/24 3/28/94 Carman, J.	Heraeus Amersil, Inc.	82–7–00927, etc.	548.05 12.5%, 11.8% or 11% 540.67 25%, 23.1% or 21.3%, etc., various rates	547.53 10%, 9.5% or 9% 540.11 7.5%, 7.2% or 6.9%, etc., various rates	Agreed statement of facts	New York Rotosil, etc. or any other merchandise classified as optical glass under item 540.67
C94/25 3/29/94 DiCarlo, J.	Canfor, Ltd.	86–04–00424	245.30 Various rates	245.90 Duty free	Arthur J. Humphreys, Inc. *v.* United States, 973 F.2d 1554 (Fed. Cir. 1992)	Blaine, WA Hardboard wall panelling
C94/26 3/29/94 DiCarlo, J.	Mattel, Inc.	88–02–00129	737.49, 737.95 12.3%, 10.9%, 9.6%	912.20 Duty free (except balloons, marbles, dice and diecast vehicles	Mattel, Inc. *v.* The United States, 926 F.2d 1116 (1991)	Los Angeles Various articles not over five cents per unit
C94/27 3/30/94 Aquilino, J.	E. Gluck Corp.	86–01–00031	716.09–716.45, 715.05, etc.	688.40, 688.45, 688.43, or 688.42, etc., Various rates	Belfont Sales Corp. *v.* United States 878 F.2d 1413 (Fed. Cir. 1989) or Texas Instruments Inc. *v.* United States 673 F.2d 1375 (1982)	New York Quartz analog watches, etc.
C94/28 3/31/94 Carman, J.	ASM Lithography	91–11–00788	674.34 4.2% $1,000,000.00 net packed	678.5097 3.7% $655,000.00 net packed 724.4030 .9¢ per square foot $85,000.00, net packed	Agreed statement of facts	Houston, TX Automatic Wafer Stepper Machine and software
C94/29 3/31/94 Carman, J.	CUI, Inc.	91–09–00687	6912.00.41 5.5% 6912.00.44 13.5%	6913.10.50 9% 6913.90.50 7% 6913.90.50 GSP Duty free	Customs' administrative ruling HQ 950177 (August 25, 1992)	Charlotte, NC Ornamental ceramic or porcelain collectors' steins

ABSTRACTED CLASSIFICATION DECISIONS—Continued

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C94/30 3/31/94 Musgrave, J.	Universal Percussion, Inc.	92–12–00838	4203.29.30 14%	4203.21.20 3%	Agreed statement of facts	Cleveland, OH Gloves
C94/31 4/1/94 Carman, J.	Universal Percussion, Inc.	93–12–00820	4203.29.30 14%	4203.21.80 4.9%	Customs Headquarters Ruling HQ 951980 March 29, 1993	Cleveland, OH Gloves

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V94/10 3/31/94 Carman, J.	CMF America, Inc.	92–06–00403	Transaction value	472,275,000 Italian Lira converted at the rate of exchange .00082 Dutiable Value of $387,266	Agreed statement of facts	Baltimore, MD Printing press stations
V94/11 3/31/94 Carman, J.	North American Foreign Trading Corp.	92–03–00143	Transaction value	19 U.S.C. Sec. 1401a(b) entered value less the values of the boxes	Agreed statement of facts	Los Angeles Watches or other electronic articles

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